but the great truths of religion, the guardian care and love of God, the communion of the human soul with his spirit, the solemn responsibility of duty, and the glorious hope of immortality, are apparent on every page. These holy comforters sustained him through nearly ninety years of life, labor, and trial, and they gave a vitality to his whole being which makes him still a living presence to us, almost three hundred years after his weary body was laid in the grave.

He died of a slow fever, February 17th, 1564. His funeral obsequies were celebrated with the greatest magnificence, the first artists of the time vying with one another to do him honor. His last will was in these simple words: "I leave my soul to God, my body to the earth, and my property to my nearest relations."

We owe Mr. Harford thanks for the two volumes which have suggested our theme; but we cannot feel that he has exhausted his subject. When the additional manuscripts lying among the archives of the Buonarroti family are made public, we trust some writer with a mind of broader scope, a richer imagination, and purer taste, will gather up the scattered materials, and weave them into a grand whole, which shall give us a true picture of the Life and Times of Michel Angelo.

ART. II. — *Glossarium Mediæ et Infimæ Latinitatis conditum a* CAROLO DUFRESNE DOMINO DUCANGE, *cum Supplementis Integris* MONACHORUM ORDINIS S. BENEDICTI, D. P. CARPENTERII, ADELUNGI, *Aliorum, suisque digessit* G. A. L. HENSCHEL. VII. Tomi. 4to. Parisiis. 1840–1850.

No student of modern history can pronounce the name of Ducange without a feeling of affectionate veneration. The rare combination of qualities requisite to lexicography, — patient industry, critical acumen, exhaustless learning, — so seldom vouchsafed to a single individual, render those who succeed in perfecting their self-imposed and repellent tasks benefactors

of no common order. When, in addition to the ordinary difficulties surrounding such labor, the attempt is made in a new and almost unexplored province, which by its vast extent and intricate recesses seems beyond the capacity of one finite mind to grasp, success would appear hopeless, and even failure not undeserving of praise. Such was the endeavor of Ducange, and his generous self-confidence was not deceived; the fullest triumph crowned his gigantic labors, and the scholars of succeeding ages look up to him as their master and their guide. A simple glossary of bastard Latin, — a vocabulary of the barbarous words which had crept into the language used after the destruction of the Roman Empire, — such is the modest form of his undertaking; but to accomplish it on his plan required him to present all the details of mediæval life, civil and military, legal and political, commercial and ecclesiastical, technical and artistic, public and domestic. Each word gives rise to an essay, in which the subject is examined on all sides with an exhaustive erudition that seems almost superhuman. Sparing of his own remarks, which are terse and to the point, he cites contemporary authorities with a profusion of research that leaves little to be asked for; while, by his skilful apposition and comparison of doubtful allusions, obscure points become clear, and that which before was inexplicable is brought within the domain of positive knowledge. In this Ducange had but little assistance to expect from his predecessors. The glossaries and notes appended by Lindenbruck, Pithou, Bignon, and others, to their editions of ancient laws and formulæ, had, it is true, assembled together a certain amount of material; the Glossary of Spelman, a more ambitious attempt, and highly creditable to that learned and accurate archæologist, was more to the purpose, and contained the results of much curious and profitable research; but these were as nothing, in plan or in execution, to the vast conception of that enterprise which Ducange alone could dare and accomplish.

In 1678, three folio volumes conveyed to the public this stupendous work, which was at once received with acclamation by the learned throughout Europe, and was acknowledged as indispensable to the apparatus of all scholars. Diligent critics calculated that the number of extracts embodied in its

pages amounted to one hundred and forty thousand, derived from six thousand different sources, printed or manuscript; while the immense range of topics discussed was rendered manifest by forty-five indexes or catalogues of words, each representing a special class, for the benefit of those who might desire to follow up particular subjects throughout the work. The very assistance afforded by the Glossary to antiquarian studies contributed, however, in the course of time, to render it imperfect, and caused deficiencies to be felt which had not previously existed. The renewed zeal of the learned gave to the world vast masses of mediæval manuscripts, which had lain concealed in dark corners of provincial libraries and ecclesiastical establishments, and the accumulation of fresh material rendered necessary an enlargement of the only work which could be referred to for its elucidation. A new edition was at length resolved on by the Benedictines, and when it appeared, in 1733 – 36, the original three volumes had expanded to six. This was no more a finality than its predecessor. The untiring efforts of Bouquet, Sécousse, Muratori, and their collaborators, to say nothing of the never-ending labors of the Bollandists, continued to collect additional matter, and in 1766 a Supplement of four more folios was published by Dom Carpentier, who had assisted his brethren in the preparation of the second edition. This huge and overgrown bulk of course placed the rich treasury of erudition beyond the reach of ordinary students, and the whole speedily became scarce and high-priced, notwithstanding various reprints of the Benedictine edition in Switzerland and Italy. At length, in our own day, the Didots of Paris, with a liberality more nearly allied to the professional pride of the early printers than to the practical money-making ideas of the present age, undertook to reconstruct this magnificent monument of their country's learning, and the result is before us. By the resources of modern typography, seven royal quarto volumes, with more than six thousand triple-columned pages, present the contents of the ten folios of the last century, augmented by much valuable matter. M. Henschel, the editor, has not only incorporated throughout the Supplement of Dom Carpentier, but, from the labors of Adelung, Haltaus, and other German

lexicographers, together with his own researches, he has also remedied to a considerable extent the deficiencies formerly existing with respect to the Teutonic writers and history.

Prodigally as Ducange lavished his intellectual wealth on this immense repository, we must not imagine that it exhausted his resources. A similar key was required to the Greek authors of the Lower Empire, and this, long vainly desired by scholars, was supplied by him in two folios, overflowing with the same abundant learning. Other works, illustrative of Byzantine and French history, any one of which would be sufficient to establish an ordinary reputation, were given to the public with equal facility; and the piles of manuscripts left behind him show that these were for him only the prolegomena of designs yet more vast and comprehensive. These labors, which, without exaggeration, may well be termed gigantic, were accomplished by steady and unremitting application. During a long life, fourteen hours a day were allotted regularly to study, and he yet found time for the domestic duties of a husband and father, and for the faithful performance of the functions of a public office. So intense was his mental activity, that his marriage-day only found him willing to reduce his allowance to six or seven hours. Looking round at the learned of our own day, and marking their skill in beating out their intellectual minimum of gold, we feel abashed in presence of the simple and single-minded scholar, with his unfathomable erudition.

If History be indeed "Philosophy teaching by example," then her text should not be merely the scandalous intrigues of a court, or the desolating achievements of an army. The inner life of the people affords the most instructive lessons, and he who would attempt to study or to teach, must seek to penetrate into these recesses. The fact which to the mere chronicler is a result, to him should be only material which, in combination with other facts, may enable him to deduce a principle. It is from this consideration that the work before us derives its special and incomparable importance. Scattered amid masses of documents, printed and manuscript, accessible to few inquirers, lie the treasures from which the history of Europe and of modern civilization is yet to be constructed. Careless allusions to forgotten customs, hints of matters which

the contemporary annalist or scrivener takes for granted, when rightly understood, often throw a flood of light on the character and manners of a period; and yet who, aspiring to more than the simple collection of materials, can undertake the hopeless task of traversing public libraries, or of penetrating carefully guarded archives, guided only by the instinct that there must be something lying concealed, yet scarcely knowing what to look for, and happy if he recognize it when found? Such efforts necessarily circumscribe the sphere of research to the narrowest possible bounds, and no enlarged results can be deduced from them. Even should the student be fortunate enough to have at his command the interminable bulk which has already been committed to print, the span of a single life is barely sufficient for the examination of his materials. To such investigations the assistance of Ducange is inestimable; not that he supplies all we may want, but that, used merely as an index, his work spares us endless, useless labor, by guiding us to the fields which yield the fullest return, while from his own inexhaustible stores he does much to make good our deficiencies. In the following attempt to group together some of the peculiarities of human progress as developed in the institution of the ORDEAL, we pay the best practical tribute to the utility of this *opus magnum*. The frequency of our citations will show the assistance derived from its richly stored pages.

It is only in an age of high and refined mental culture that man, unassisted by direct inspiration, can entertain an adequate conception of the Supreme Being. An Omnipotence that can work out its destined ends, and yet allow its mortal creatures free scope to mould their own fragmentary portions of the great whole; a Power so infinitely great that its goodness, mercy, and justice are compatible with the existence of evil in the world which it has formed, so that man has full liberty to obey the dictates of his baser passions, without being released from responsibility, and, at the same time, without disturbing the preordained results of Divine wisdom and beneficence, — these are not the ideas which prevail in the formative periods of society. Accordingly, in the earlier epochs of almost all races, a belief in a Divine Being is

accompanied with the expectation that special manifestations of power will be made on all occasions, and that the interposition of Providence may be had for the asking, whenever man, in the pride of his littleness, condescends to waive his own judgment, and undertakes to test the inscrutable ways of his Creator by the touchstone of his own limited reason. Thus miracles come to be expected as matters of every-day occurrence, and the laws of nature are to be suspended whenever man chooses to tempt his God with the promise of right and the threat of injustice to be committed in His name.

To these elements of the human mind is attributable the almost universal adoption of the so-called Judgment of God, by which men, oppressed with doubt, have essayed in all ages to relieve themselves from responsibility by calling in the assistance of Heaven. Nor, in so doing, have they seemed to appreciate the self-exaltation implied in the act itself, but, in all humility, have cast themselves and their sorrows at the feet of the Great Judge, making a merit of abnegating the reason which, however limited, has been bestowed to be used and not rejected. In the Carlovingian Capitularies there occurs a passage, dictated doubtless by the spirit of genuine trust in God, which well expresses the pious sentiments presiding over acts of the grossest practical impiety. "Let doubtful cases be determined by the judgment of God. The judges may decide that which they clearly know, but that which they cannot know shall be reserved for Divine judgment. Whom God hath kept for his own judgment may not be condemned by human means. 'Therefore judge nothing before the time, until the Lord come, who both will bring to light the hidden things of darkness, and will make manifest the counsels of the hearts.'"* (1 Cor. iv. 5.)

With but one exception, the earliest records of the human race bear witness to the existence of the superstition thus dignified with the forms of Christian faith, and this excep-

* "In ambiguis, Dei judicio reservetur sententia. Quod certe agnoscunt suo, quod nesciunt divino reservent judicio. Quoniam non potest humano condemnari examine quem Deus suo judicio reservavit. Incerta namque non debemus judicare quoadusque veniat Dominus, qui latentia producet in lucem, et inluminabit abscondita tenebrarum, et manifestabit consilia cordium." — Capit. Lib. VII. cap. 259.

tion, as might be anticipated, is furnished by China. Her strange civilization presents itself, in the Sacred Books collected by Confucius five hundred years before the Christian era, in nearly the same form as it exists to this day, guided by a religion destitute of life, and consisting of a system of cold morality, which avoids the virtues as well as the errors of more imaginative and generous faith. In the most revered and authoritative of the Chinese scriptures, the Chou-King, or Holy Book, of which the origin is lost in fabulous antiquity, we find a theo-philosophy recognizing a Supreme Power (Taï-Ki) or Heaven, which is pure reason, or the embodiment of the laws and forces of Nature, acting under the pressure of blind destiny. Trace back the Chinese belief as far as we may, we cannot get behind this refined and philosophical scepticism. The flowery kingdom starts from the night of Chaos intellectually full-grown, like Minerva, and from first to last there is no semblance of a creed which would admit of the direct practical intervention of a higher power. The fullest admission which this prudent reserve will allow is expressed by the legislator Mou-Vang (about 1000 B. C.) in his instructions to his judges in criminal cases: "Say not that Heaven is unjust, — it is that man brings these evils on himself. If it were not that Heaven inflicts these severe punishments, the world would be ungoverned."* In the modern penal code of China there is accordingly no allusion to evidence other than that of witnesses, and even oaths are neither required nor admitted in judicial proceedings.†

When we turn, however, to the other great source of Asiatic jurisprudence, whose fantastic intricacy forms so strange a contrast to the coeval sober realism of China, we find in the Laws of Menou abundant proof of our general proposition. There is no work of the human intellect which offers so curious a field of speculation to the student of human nature; none in which the transitions are so abrupt, or the contradictions so startling, between the most sublime doctrines of spiritual morality, and the grossest forms of puerile

* Chou-King, Part IV. chap. 27, § 21 (after Goubil's translation).

† Staunton, Penal Code of China, p. 364.

superstition, — the most elevated precepts of universal justice, and the foulest partiality in specific cases. Its very complexity reveals a highly civilized state of society, and the customs and observances which it embodies are evidently not innovations on an established order of things, but merely a compilation of regulations and procedures established through previous ages, whose origin is lost in the trackless depths of remote antiquity. When, therefore, we see in the Hindoo code the same strange and unnatural forms of purgation which two thousand years later* greet us on the threshold of European civilization, adorned but not concealed by a thin veil of Christianized superstition, the coincidence seems more than accidental. That the same principle should be at work in each, we can account for by the general tendencies of the human mind; but that this principle should manifest itself under the same remarkable shapes in races so far removed by time and space, seems to hint at special affinities of origin, perplexing and impenetrable, and as yet but darkly guessed at by modern ethnologists. In the following texts, the principal forms of Ordeal prescribed are precisely similar to the most popular of the mediæval judgments of God: —

"Or, according to the nature of the case, let the judge cause him who is under trial to take fire in his hand, or to plunge in water, or to touch separately the heads of his children and of his wife.

"Whom the flame burneth not, whom the water rejects not from its depths, whom misfortune overtakes not speedily, his oath shall be received as undoubted.

"When the Richi Vatsa was accused by his young half-brother, who stigmatized him as the son of a Soûdra, he sware that it was false, and passing through fire proved the truth of his oath: the fire, which attests the guilt and the innocence of all men, harmed not a hair of his head, for he spake the truth." †

That this was not merely a theoretical injunction is shown by a subsequent provision (Book VIII. v. 190), enjoining the ordeal on both plaintiff and defendant, even in certain civil

* Sir William Jones places the composition of the Laws of Menou about 880 B. C. More recent investigators, however, have arrived at the conclusion, that they are anterior to the Christian era by at least thirteen centuries.

† Laws of Menou, Book VIII. v. 114 – 116 (after Delongchamp's translation).

cases. From the immutable character of Eastern institutions, we need not be surprised to see the custom flourishing in India to the present day, and to find that, in the popular estimation, the guilt or innocence of the accused is to be tested by his ability to carry red-hot iron, to plunge his arm unhurt in boiling oil, to pass through fire, to remain under water, to swallow consecrated rice, to drink water in which an idol has been immersed, to maintain his normal weight when a paper on which the accusation is written has been addded to the scale, or to choose between an image of silver and one of lead, — all forms which still preserve their hold on public veneration,* as many of them did within five or six centuries among our own forefathers.

The numerous points of resemblance existing between the Indian and Egyptian civilizations, which render it probable that the one was derived from the other, lead us also to presume that these superstitions were common to both races. Detailed evidence, such as we possess in the case of Hindostan is, however, not to be expected with regard to Egypt, of which the literature has so utterly perished; but an incident related by Herodotus shows us that the same belief existed in the land of the Pharaohs, in at least one form, and that in judicial proceedings an appeal was habitually made to some deity, whose response had all the weight of a legal judgment, a direct interposition of the divinity being expected as a matter of course by all parties. King Amasis, whose reign immediately preceded the invasion of Cambyses, "is said to have been, even when a private person, fond of drinking and jesting, and by no means inclined to serious business; and when the means failed him for the indulgence of his appetites, he used to go about pilfering. Such persons as accused him of having their property, on his denying it, used to take him to the oracle of the place, and he was oftentimes convicted by the oracles, and oftentimes acquitted. When, therefore, he had come to the throne, he acted as follows: Whatever gods had absolved him from the charge of theft, of their temples he neither took any heed, nor contributed

* Hastings, Asiatic Researches (Königswarter).

anything toward their repair; neither did he frequent them nor offer sacrifices, considering them of no consequence at all, and as having only lying responses to give. But as many as had convicted him of the charge of theft, to them he paid the highest respect, considering them as truly gods, and delivering authentic responses." *

A passing allusion only is necessary to the instances, which will readily occur to the Biblical student, in the Hebrew legislation and history. The bitter water by which conjugal infidelity was revealed (Numbers v. 11–31), was an ordeal pure and simple, as were likewise the special cases of determining criminals by lot, such as that of Achan (Joshua vii. 16–18) and of Jonathan (1 Samuel xiv. 41, 42), — precedents which were duly put forward by the monkish defenders of the practice, when battling against the efforts of the Papacy to abolish it.

Looking to the farthest East, we find the belief in full force in Japan. Fire is there considered, as in India, to be the touchstone of innocence,† and other superstitions, less dignified and more puerile, have equal currency. The *goo*, a paper inscribed with certain cabalistic characters, and rolled up into a bolus, when swallowed by an accused person, is believed to afford him no internal rest, if guilty, until he is relieved by confession, and a beverage of water in which the *goo* has been soaked is attended with like happy effects. ‡ The immobility of Japanese customs authorizes us to conclude that these practices have been observed from time immemorial. §

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* Euterpe, 174 (Cary's translation).

† Königswarter, Études Historiques sur le Développement de la Société Humaine, p. 203.

‡ Collin de Plancy, Dictionnaire Infernal, pp. 255 and 305.

§ The preservation of the *status in quo* is amply provided for in Japan. Any functionary of the government, however exalted, who attempts an innovation, is forthwith reported to head-quarters and capitally sentenced. Even in the supreme council, a member who proposes an alteration in the existing state of affairs loses his life if it is not adopted; while, on the other hand, the Ziogoon or Emperor is put to death if he rejects such an alteration after it has passed the council, on its rejection being disapproved by an interior committee, consisting of his relatives. If his action be sustained by this committee, then all who voted for the unsuccessful measure in the supreme council are liable to the same fate. (Perry's Japan Expe-

In Pegu the same ordeals are employed as in India, and Java and Malacca are equally well supplied.* Thibetan justice has a custom of its own, which is literally even-handed, and which, if generally used, must exert a powerful influence in repressing litigation. Both plaintiff and defendant thrust their arms into a caldron of boiling water containing a black and a white stone, victory being assigned to the one who succeeds in obtaining the white.†

Among the crowd of fantastic legends concerning Zoroaster is one which, from its resemblance to the ordeal of fire, may be regarded as indicating a tendency to the same form of superstition among the Guebres. They relate that, when an infant, he was seized by the magicians, who predicted his future supremacy over them, and was thrown upon a blazing fire. The pure element refused to perform its office, and was changed into a bath of rose-water for the wonderful child.‡

To some extent the Moslems are an exception to the general rule; and this may be attributed to the doctrine of predestination which forms the basis of their creed, as well as to the elevated ideas of the Supreme Being which Mahomet drew from the Bible, and which are so greatly in advance of all the Pagan forms of belief. There is accordingly no authority in the Koran for any description of ordeal; but yet it is occasionally found among the true believers. Among some tribes of Arabs, for instance, the ordeal of red-hot iron appears in the shape of a gigantic spoon, to which, when duly heated, the accused applies his tongue, his guilt or innocence being apparent from his undergoing or escaping injury.§ The tendency of the mind towards superstitions of this nature, in spite of the opposite teaching of religious dogmas, is likewise shown by a species of divination employed among the Turks, by which thieves are discovered by observing the marks on

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dition, I. 16, 17.) Under these regulations, existing institutions may be regarded as almost imperishable. It is quite possible that the recent *hari-kari*, or suicide, of the late Emperor, may be attributable to the innovation of permitting foreign intrusion.

* Königswarter, *op. cit.* p. 202.

† Duclos, Mém. sur les Épreuves.

‡ Collin de Plancy, *op. cit.* p. 555.

§ Königswarter, *op. cit.* p. 203.

wax slowly melted while certain cabalistic sentences are repeated over it.*

The gross and clumsy superstitions of Africa have this element in common with the more refined religions of other races, modified only in its externals. Thus among the Kalabarese various ordeals are in use, of a character which reveals the rude nature of the savage. The "afia-edet-ibom" is administered with the curved fang of a snake, which is cunningly inserted under the lid and round the ball of the defendant's eye; if innocent, he is expected to eject it by rolling the eye, while, if unable to perform this feat, it is removed with a leopard's tooth, and he is condemned. The ceremony of the "afia-ibnot-idiok" is even more childish. A white and a black line are drawn on the skull of a chimpanzee, which is then held up before the accused, when an apparent attraction of the white line towards him indicates his innocence, or an inclination of the black towards him pronounces his guilt. The use of the ordeal-nut is more formidable, as it contains an active principle which is a deadly poison, manifesting its effects by frothing at the mouth, convulsions, paralysis, and speedy death. In capital cases, or even when sickness is attributed to unfriendly machinations, the "abiadiong" or sorcerer decides who shall undergo the trial, and as the poisonous properties of the nut can be eliminated by boiling, liberality on the part of the accused is supposed to be an unfailing mode of rendering the ordeal harmless.†

Although the classical nations of antiquity were not in the habit of employing ordeals as a judicial process, during the periods in which their laws have become known to us, still there is sufficient evidence that a belief in their efficacy existed before philosophical scepticism had reduced religion to a system of hollow observances. The various modes of divination by oracles and omens, which occupy so prominent a position in history, manifest a kindred tendency of mind, in demanding of the gods a continual interference in human

* Collin de Plancy, s. v. *Céromancie.*

† Hutchinson's Impressions of Western Africa. London. 1858.

affairs, at the call of any suppliant, and we are therefore prepared to recognize, among the Greeks, the relics of pre-existing judicial ordeals in various forms of solemn oaths, by which, under impressive ceremonies, actions were occasionally terminated, the party swearing being obliged to take the oath on the heads of his children (*κατὰ τῶν παίδων*), with curses on himself and his family (*κατ' ἐξωλείας*), or passing through fire (*διὰ τοῦ πυρός*).* The secret meaning of these rites becomes fully elucidated on comparing them with a passage from the Antigone of Sophocles, in which, the body of Polynices having been secretly carried off for burial against the commands of Creon, the guard endeavor to repel the accusation of complicity by offering to vindicate their innocence in various forms of ordeal, which bear a striking similarity to those in use throughout India, and long afterwards in mediæval Europe.

> "Ready with hands to bear the red-hot iron,
> To pass through fire, and by the gods to swear,
> That we nor did the deed, nor do we know
> Who counselled it, nor who performed it."†

The water ordeal, which is not alluded to here, may nevertheless be considered as having its prototype in several fountains, which were held to possess special power in cases of suspected female virtue. One at Artecomium, mentioned by Eustathius, became turbid as soon as entered by a guilty woman. Another near Ephesus, alluded to by Achilles Tatius, was even more miraculous. The accused swore to her innocence, and entered the water, bearing suspended to her neck a tablet inscribed with the oath. If she were innocent, the water remained stationary, at the depth of the midleg; while if she were guilty, it rose until the tablet floated. Somewhat similar to this was the Lake of Palica in Sicily, commemorated by Stephanus Byzantinus, where the party inscribed his oath on

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* Smith, Dict. Greek and Roman Antiq., s. v. *Martyria.*

† *ἦμεν δ' ἕτοιμοι καὶ μύδρους αἴρειν χεροῖν,*
καὶ πῦρ διέρπειν, καὶ θεοὺς ὁρκωμοτεῖν,
τὸ μήτε δρᾶσαι, μήτε τῳ ξυνειδέναι
τὸ πρᾶγμα βουλεύσαντι, μήτ' εἰργασμένῳ.
Antigone, ver. 264 – 267.

a tablet, and committed it to the water, when, if the oath were true, it floated, and if false, it sunk.*

The Roman nature, sterner and less impressible than the Greek, offers less evidence of weakness in this respect; but traces of it are nevertheless to be found. The mediæval *corsnæd*, or ordeal of bread, finds a prototype in a species of alphitomancy practised near Lavinium, where a sacred serpent was kept in a cave under priestly care. Women whose virtue was impeached offered to the animal cakes made by themselves, of barley and honey, and were condemned or acquitted according as the cakes were eaten or rejected.† The fabled powers of the *ætites*, or eagle-stone, mentioned by Dioscorides,‡ likewise remind us of the *corsnæd*, as bread in which it was placed, or food with which it was cooked, became a sure test for thieves, from their being unable to swallow it. Special instances of miraculous interposition to save the innocent from unjust condemnation may also be quoted as manifesting the same general tendency of belief. Such was the case of the vestal Tucca, accused of incest, who demonstrated her purity by carrying water in a sieve,§ and that of Claudia Quinta, who, under a similar charge, made good her defence by dragging a ship against the current of the Tiber, after it had run aground, and had resisted all other efforts to move it.‖ As somewhat connected with the same ideas, we may

* Eustathii de Amor. Ismenii, Lib. VII. and XI.; Achill. Tatii de Amor. Clitoph. Lib. VIII.; Steph. Byzant. s. v. Παλικη (apud Spelman, Gloss. p. 324). Superstitions of this nature have obtained in all ages, and these particular instances find their special modern counterpart in the fountain of Bodilis, near Landivisiau in Brittany, in which a girl when accused places the pin of her collar, her innocence or guilt being demonstrated by its floating or sinking.

† Collin de Plancy, *op. cit.* p. 31.

‡ Lib. V. cap. 161 (ap. Lindenbrog.).

§ Valer. Maxim. Lib. VIII. cap. 1.

‖ "Supplicis, alma, tuæ, genetrix fœcunda Deorum,
Accipe sub certa conditione preces.
Casta negor; si tu damnas, meruisse fatebor.
Morte luam pœnas, judice victa Dea.
Sed si crimen abest, tu nostræ pignora vitæ
Re dabis; et castas casta sequere manus,
Dixit, et exiguo funem conamine traxit," etc.
Ovid, Fastorum, Lib. IV. l. 305, et seq.

This invocation to the goddess to absolve or condemn, and the manner in which

allude to the imprecations accompanying the most solemn form of oath among the Romans, known as "Jovem lapidem jurare" ("quod sanctissimum jusjurandum est habitum," Aulus Gellius, I. 21), whether we take the ceremony, mentioned by Festus, of casting a stone from the hand, and invoking Jupiter to reject in like manner the swearer if guilty of perjury, or that described by Livy as preceding the combat between the Horatii and Curiatii, in which an animal was knocked on the head with a stone, under a somewhat similar adjuration.*

In turning to the Barbarian races from whom the nations of modern Europe are descended, we are met by the question, which has been variously mooted, whether the ordeals that form so prominent a part of their jurisprudence were customs derived from remote Pagan antiquity, or whether they were inventions of the priests in the early periods of rude Christianity, to enhance their own authority, and to lead their reluctant flocks to peace and order under the influence of superstition. There would seem to us no doubt that the former is the correct opinion, and that the religious ceremonies surrounding the ordeal as we find it judicially employed, were introduced by the Church to Christianize the Pagan observances, which in this instance, as in so many others, it was judged impolitic, if not impossible, to eradicate. Various traces of such institutions are faintly discernible in the darkness from which the wild tribes emerge into the twilight of history. Thus an anonymous epigram preserved in the Greek Anthology informs us of a singular custom existing in the Rhine-land, anterior to the conversion of the inhabitants, by which the legitimacy of children was established by exposure to an ordeal of the purest chance.

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the entire responsibility is thrown upon the supernal judge, give the whole transaction a striking resemblance to an established judicial form of ordeal.

* "Si sciens fallo, tum me Diespiter salva urbe arceque bonis ejiciat, ut ego hunc lapidem." — Festus, Lib. X.; Livy, I. 24. If we can receive as undoubted Livy's account of a similar ceremony performed by Hannibal to encourage his soldiers before the battle of the Ticinus (Lib. XXI. cap. 45), we must conclude that the custom had obtained a very extended influence.

Θαρσαλέοι Κελτοὶ ποταμῷ ζηλήμονι Ῥήνῳ, κ. τ. λ.*

" Upon the waters of the jealous Rhine
The savage Celts their children cast, nor own
Themselves as fathers, till the power divine
Of the chaste river shall the truth make known.
Scarce breathed its first faint cry, the husband tears
Away the new-born babe, and to the wave
Commits it on his shield, nor for it cares
Till the wife-judging stream the infant save,
And prove himself the sire. All trembling lies
The mother, racked with anguish, knowing well
The truth, but forced to risk her cherished prize
On the inconstant water's reckless swell."

We learn from Cassiodorus that Theodoric, towards the close of the fifth century, abolished the battle ordeal among the Ostrogoths, whence we may reasonably conclude that the appeal to the judgment of God was an ancestral custom of the race.† But the most convincing proof is found in the Salique Law, of which the earliest known text may safely be assumed to be coeval with the conversion of Clovis, as it contains no allusion to Christian rules such as appear in revisions made somewhat later. In this text, the ordeal of boiling water finds its place as a judicial process in regular use, as fully as in the subsequent revisions of the code.‡ In the Decree of Tassilo, Duke of the Baioarians, issued in 772, there is a reference to a pre-existing custom, named *Stapfsaken*, used in cases of disputed debt, which is denounced as a relic of Pagan rites,—" in verbis quibus ex vetusta consuetudine paganorum, idolatriam reperimus,"—and which is there altered to suit the new order of ideas, affording an instructive example of the process to which we have alluded. It is evidently a kind of ordeal, as is manifested by the expression, " Let us stretch forth our right

* Anthologiæ, Lib. IX. Ep. 125. This charming trait of Celtic domestic confidence has been called in question by some writers, but it rests on good authority. Claudian evidently alludes to it as a well-known and undisputed fact in the lines,

" Galli
Quos Rhodanus velox, Araris quos tardior ambit,
Et quos nascentes explorat gurgite Rhenus."

In Rufinum, Lib. II. l. 110.

† Variarum, Lib. III. Epist. 23, 24.

‡ Tit. LIII., LVI. (First Text of Pardessus.)

hands to the just judgment of God." * These proofs we deem amply sufficient to demonstrate the existence of the practice as a primitive custom of the Barbarian races, prior to their occupation of the Roman empire. If more be required, it must be remembered that the records of those wild tribes do not extend beyond the period of their permanent settlement, when baptism and civilization were received together, so that we cannot reasonably ask for codes and annals at a time when each sept was rather a tumultuous horde of freebooters than a people living under a settled form of organized society. Tacitus, it is true, makes no mention of anything approaching nearer to the Judgment of God than the various forms of rude divination common to all superstitious savages. It is highly probable that to many tribes the ordeal was unknown, and that it had nowhere assumed the authority which it afterwards acquired, when the Church found in it a powerful instrument to enforce her authority, and to acquire influence over the rugged nature of her indocile converts. Indeed, we have evidence that in some cases it was introduced, and its employment enforced, for the purpose of eradicating earlier Pagan observances.†

Be this as it may, the custom was not long in extending itself throughout Europe. The laws of the Salien Franks we have already alluded to, and the annals of Gregory of Tours and of Fredegarius, the Merovingian Capitularies, and the various collections of Formularies, show that it was not merely a theoretical prescription, but an every-day practice among them. The Ripuarian Franks were somewhat more cautious, and the few references to its employment which occur in their code would seem to confine its application to slaves and strangers.‡ The code of the Alamanni makes no allusion to any form except that of the "tracta spata," or judicial duel. The Lex Baioariorum, in its original form,

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* "Extendamus dextera nostra ad justum judicium Dei." — Decret. Tassilonis, Tit. II. § 7.

† "Et vetavit Comes ne Sclavi de cetero jurarent in arboribus, fontibus, et lapidibus; sed offerrent criminibus pulsatos sacerdoti, ferro ac vomeribus examinandos." — Anon. Chron. Sclavic. Cap. XXV. (Ducange.)

‡ L. Ripuar. Tit. XXX. §§ 1, 2; Tit. XXXI. § 5.

while referring constantly to the combat, seems innocent of any other mode. The supplementary Decree of Tassilo, however, affords an instance, quoted above, and another which seems to show that force was sometimes necessary to carry out the decision to employ it.* The Wisigoths, who, like their kinsmen the Ostrogoths, immediately on their settlement adapted themselves in a great degree to Roman laws and customs, for nearly two centuries had no allusion in their body of laws to any form of ordeal. It was not until 693, long after the destruction of their independence in the South of France, and but little prior to their overthrow in Spain by the Saracens, that their king, Egiza, with the sanction of the Council of Toledo, issued an edict commanding the employment of the *æneum*, or ordeal of boiling water. The expressions of the law, however, warrant the conclusion, that this was only the extension of a custom previously existing, by removing the restrictions which had prevented its application to all questions, irrespective of their importance.† The Burgundian code refers more particularly to the duel, which was the favorite form of ordeal with that race, but from the writings of St. Agobard we may safely assume that the trials by hot water and by iron were in frequent use. The primitive Saxon jurisprudence also prefers the battle ordeal; but the other kinds are met with in the codes of the Frisians ‡ and of the Thuringians.§ The earliest Lombard law, as compiled by Rotharis, refers only to the wager of battle; but the additions of Liutprand, made in the eighth century, allude to the employment of the hot-water ordeal as a recognized procedure.‖ In England, the Britons appear to have regarded the ordeal with much favor, as a treaty between the Welsh

* "Ut . . . . . liberi . . . . . ad eadem cogantur judicia quæ Baioarii *Urtella* dicunt." — Decret. Tassilon. Tit. II. § 9.

† "Multas cognovimus querelas, et ab ingenuis multa mala pati, credentes in ccc. solidis quæstionem agitari. Quod nos modo per salubrem ordinationem censemus, ut quamvis parva sit actio rei facti ab aliquo criminis, eum per examinationem aquæ ferventis a judice distringendum ordinamus." — L. Wisigoth. Lib. VI. Tit. I. § 3.

‡ L. Frision. Tit. III. §§ 4, 5, 6.

§ L. Anglior. et Werinor. Tit. XIV.

‖ L. Longobard. Lib. I. Tit. XXXIII. § 1.

and the Saxons (about the year 1000) provides that all questions between individuals of the two races should be settled in this manner, in the absence of a special agreement between the parties.* The Anglo-Saxons seem to have been somewhat late in adopting it; for the Dooms of the earlier princes refer exclusively to the refutation of accusations by oath with compurgators, and we find no allusion made to the ordeal until the time of Edward the Elder, at the commencement of the tenth century, that allusion, however, being of a nature to show that it was then a settled custom, and not an innovation.† Among the Northern races it was probably indigenous, the earliest records of Iceland, Denmark, and Sweden manifesting its vigorous existence, at a period anterior to their conversion to Christianity; and the same may be said of the Sclavonic tribes in Eastern Europe, from Bohemia to the farthest confines of Russia.‡ The Majjars placed equal reliance on this mode of proof, as is shown by the Statutes of King Coloman (about the year 1100), which allude to various forms of ordeal as in common use.§ Scotland likewise employed it in her jurisprudence, as developed in the code known as "Regium Majestatem Scotiæ," attributed to David I., in the first half of the twelfth century.‖ Even the Byzantine civilization became contaminated with the prevailing custom, and various instances of its use are related by the historians of the Lower Empire, to a period as late as the middle of the fourteenth century.

One cause of the general prevalence of the ordeal among the Barbarian tribes settled in the Roman provinces may perhaps have arisen from the custom, which prevailed universally, of allowing all races to retain their own jurisprudence, how-

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* "Non sit alia lada (i. e. purgatio) de tyhla (i. e. compellatione) nisi ordalium, inter Walos et Anglos." — Senatus-Consult. de Monticolis Waliæ, Cap. II. Our references to Anglo-Saxon laws are made to Thorpe's excellent collection, "Ancient Laws and Institutes of England," 2 vols., 8vo, London, 1840.

† Dooms of King Edward, Cap. III.; Laws of Edward and Guthrum, Cap. IX.

‡ Königswarter, *op. cit.* pp. 211, 224.

§ "Judicium ferri et aquæ in aliqua ecclesia fieri indicimus." — Lib. I. (Ducange, s. v. *Aquæ Frigidæ.*)

‖ For instance, Lib. IV. Cap. III. § 4. (Ducange.)

ever socially intermingled the individuals might be. The confusion thus produced is well set forth by St. Agobard, when he remarks that frequently five men shall be in close companionship, each owning obedience to a different law.* He further states, that, under the Burgundian rules of procedure, no one was admitted to bear witness against a man of different race; † so that in a large proportion of cases there could be no legal evidence attainable, and recourse was had of necessity to the judgment of God. No doubt a similar tendency existed generally, and the man who appealed to Heaven against the positive testimony of witnesses of different origin, would be very apt to find the court disposed to grant his request.

Having thus indicated the universality of the custom throughout Europe, we proceed to consider the various forms which were chiefly used. In this we shall take no notice of the wager of battle, though perhaps the most important of all in its widely extended jurisdiction, its early appearance, and its late abolition. A detailed account of it in a late number of this journal (No. CLXXXII., for January, 1859), renders further allusion to it inappropriate, except so far as may be necessary to illustrate the common principle upon which all were based.

The principal modes by which the will of Heaven was ascertained were the ordeal of fire, whether administered directly, or through the agency of boiling water or red-hot iron; that of cold water; of bread or cheese; of the Eucharist; of the cross; the lot; and the touching of the body of the victim in cases of murder. Some of these, it will be seen, required a miraculous interposition to save the accused, others to condemn; some depended altogether on volition, others on the purest chance; while others, again, derived their power from the influence exerted on the mind of the patient. They were all accompanied with solemn religious observances, and the most impressive ceremonies of the Church were lavishly

* "Nam plerunque contingit ut simul eant aut sedeant quinque homines, et nullus eorum communem legem cum altero habeat." — Lib. adv. Legem Gundobadi, Cap. IV.

† "Ex qua re oritur res valde absurda, ut si aliquis eorum in cœtu populi, aut etiam in mercato publico commiserat aliquam pravitatem, non coarguatur testibus." — Ibid. Cap. VI.

employed to give authority to the resultant decisions, and to impress on the minds of all the directness of the interposition which was expected from the Creator.

The ordeal of boiling water (*æneum*, *judicium aquæ ferventis*, *cacabus*, *caldaria*) is probably the oldest form in which the application of fire was judicially administered in Europe as a mode of proof. It is the one usually referred to in the most ancient texts of laws, and its universal adoption denotes a very high antiquity. A caldron of water was brought to the boiling point, and the accused was obliged with his naked hand to find a small stone or ring thrown into it; sometimes the latter portion was omitted, and the hand was simply inserted, in trivial cases to the wrist, in crimes of magnitude to the elbow, the former being termed the single, the latter the triple ordeal;* or, again, the stone was employed, suspended by a string, and the severity of the trial was regulated by the length of the line, a palm's breadth being counted as single, and the distance to the elbow as triple.† A good example of the process, in all its details, is furnished us by Gregory of Tours, ‡ who relates that, an Arian priest and a Catholic deacon disputing about their respective tenets, and being unable to convince each other, the latter proposed to refer the subject to the decision of the *æneum*, and the offer was accepted. Next morning the deacon's enthusiasm cooled, and he mingled his matins with precautions of a less spiritual nature, by bathing his arm in oil, and anointing it with protective unguents. The populace assembled to witness the exhibition, the fire was lighted, the caldron boiled furiously, and a little ring thrown into it was whirled round like a straw in a tornado, when the deacon politely invited his adversary to make the trial first. This was declined, on the ground that precedence belonged to the challenger, and with no little misgiving the deacon proceeded to roll up his sleeve, when the Arian, observing the precautions that had been taken, exclaimed that he had been using magic arts, and that the trial would amount to

* Dooms of King Æthelstan, IV. cap. 7.

† Adjuratio ferri vel aquæ ferventis (Baluze, II. 655).

‡ De Gloria Martyrum, Lib. I. cap. 81 (Eccardus).

nothing. At this critical juncture, when the honor of the orthodox faith was trembling in the balance, a stranger stepped forward, — a Catholic priest named Jacintus, from Ravenna, — and offered to undergo the experiment. Plunging his arm into the bubbling caldron, he was two hours in capturing the ring, which eluded his grasp in its fantastic gyrations; but finally, holding it up in triumph to the admiring spectators, he declared that the water felt cold at the bottom, with an agreeable warmth at the top. Fired by the example, the unhappy Arian boldly thrust his arm into the water; but the falseness of his cause belied the confidence of its rash supporter, and in a moment the flesh was boiled off the bones up to the elbow. "Injectu manu, protinus usque ad ipsa ossium internodia caro liquefacta defluxit."

This was a volunteer experiment. As a means of judicial investigation, the process was surrounded with all the solemnity which the most venerated rites of the Church could impart. Fasting and prayer were enjoined for three days previous, and the ceremony commenced with special prayers and adjurations, introduced for the purpose into the litany, and recited by the officiating priests; mass was celebrated, and the accused was required to partake of the sacrament under the fearful adjuration, "This body and blood of our Lord Jesus Christ be to thee this day a manifestation!" This was followed by an exorcism of the water, of which numerous formulas are on record, varying in detail, but all presenting the quaintest superstition mingled with the most audacious presumption, as though all the powers of the Creator were intrusted to his servant, — the whole furnishing a vivid picture of robust faith and self-confident ignorance.

"O creature of water! I adjure thee by the living God, by the holy God who in the beginning separated thee from the dry land; I adjure thee by the living God who led thee from the fountain of Paradise, and in four rivers commanded thee to encompass the world; I adjure thee by Him who in Cana of Galilee by his will changed thee to wine, who trod on thee with his holy foot, who gave thee the name Siloa; I adjure thee by the God who in thee cleansed Naaman, the Syrian, of his leprosy; — Saying, O holy water, O blessed water, water which washest the dust and sins of the world, I adjure thee by the

living God that thou shalt show thyself pure, nor retain any false image, but shalt be exorcised water, to make manifest and reveal and bring to naught all falsehood, and to make manifest and bring to light all truth; so that he who shall place his hand in thee, if his cause be just and true, shall receive no hurt; but if he be perjured, let his hand be burned with fire, that all men may know the power of our Lord Jesus Christ, who will come with the Holy Ghost to judge with fire the quick and the dead, and the world! Amen!"*

After the experiment had taken place, the hand was carefully enveloped in a cloth, sealed with the signet of the judge, and three days afterwards it was unwrapped, when the guilt or innocence of the party was announced by the condition of the member.†

The justification of this mode of procedure by its most able defender, Hincmar, Archbishop of Rheims, is similar in spirit to this form of adjuration. King Lothair, great-grandson of Charlemagne, desiring to get rid of his wife, Teutberga, accused her of the foulest incest, and forced her to a confession, which she afterwards recanted, proving her innocence by undergoing the ordeal of hot water by proxy. Lothair, nevertheless, married his concubine, Waldrada, and for ten years the whole of Europe was occupied with the disgusting details of the quarrel, council after council assembling to consider the subject, and the thunders of Rome being freely employed. Hincmar, the most conspicuous ecclesiastic of his day, stood boldly forth in defence of the unhappy Queen, and in his treatise "De Divortio Lotharii et Teutbergæ," he was led to justify the use of ordeals of all kinds. The species of reasoning which was deemed conclusive in the ninth century may be appreciated from his arguments in favor of the *æneum*, — "Because in boiling water the guilty are scalded and the innocent are unhurt, because Lot escaped unharmed from the fire of Sodom and the future fire which will precede the terrible Judge will be harmless to the

* Formulæ Exorcismorum, Baluze, II. 639 et seq. Various other formulas are given by Baluze, Spelman, Muratori, and other collectors, all manifesting the same unconscious irreverence.

† Doom concerning hot iron and water; Laws of Æthelstan, Thorpe, I. 226; Baluze, II. 644.

Saints and will burn the wicked, as in the Babylonian furnace of old." *

This form of trial was in use among all the races in whose legislation the *purgatio vulgaris* found place. It is the only mode alluded to in the Salique Law, from the primitive text to the amended code of Charlemagne.† The same may be said of the Wisigoths, as we have already seen; while the early codes of the Frisians, the Anglo-Saxons, and the Lombards, all refer cases to its decision. ‡ In Iceland it was employed from the earliest times, under the name of *ketiltak* or *ketilfang;* § and it continued in vogue throughout Europe until the general discredit attached to this mode of judgment led to the gradual abandonment of the ordeal as a legal process. It is among the forms enumerated in the sweeping condemnation of the whole system in 1215 by Innocent III. in the Fourth Council of Lateran; but even subsequently we find it prescribed in certain cases by the municipal laws in force throughout the whole of Northern and Southern Germany,‖ and as late as 1282 it is specified in a charter of Gaston of Béarn, conferring on a church the privilege of holding ordeals.¶

The trial by red-hot iron (*judicium ferri, juise*) was in use from a very early period, and became one of the favorite modes of determining disputed questions. It was administered in two essentially different forms. The one (*vomeres igniti, examen pedale*) consisted of laying on the ground at certain distances six, nine, or in some cases twelve, red-hot ploughshares, among which the accused walked barefooted, sometimes blindfolded, when it became an ordeal of pure

* "Quia in aqua ignita coquuntur culpabiles et innoxii liberantur incocti, quia de igne Sodomitico Lot justus evasit inustus, et futurus ignis qui præibit terribilem judicem, Sanctis erit innocuus et scelestos aduret, ut olim Babylonica fornax, quæ pueros omnino non contigit." — Interrog. VI.

† First Text of Pardessus, Tit. LIII., LVI.; MS. Guelferbyt. Tit. XIV., XVI.; L. Emend. Tit. LV., LIX.

‡ L. Frision. Tit. III.; L. Æthelredi, IV. § 6; L. Lombard. Lib. I. Tit. XXXIII. § 1.

§ Königswarter, *op. cit.* p. 212.

‖ Jur. Provin. Saxon. Lib. I. Art. 39; Jur. Provin. Alaman. Cap. XXXVII. §§ 15, 16.

¶ Ducange.

chance, and sometimes compelled to press each iron with his naked feet.* The other and more usual form obliged the patient to carry in his hand for a certain distance, usually nine feet, a piece of red-hot iron, the weight of which was determined by law and varied with the importance of the question at issue or the magnitude of the alleged crime.† The hand was then wrapped up and sealed, and three days afterward the decision was rendered in accordance with its condition.‡ These proceedings were accompanied by the same solemn observances which we have already described, and the intervention of God was invoked in the name of all the manifestations of Divine clemency or wrath by the agency of fire, — Shadrach, Meshach, and Abed-nego, the burning bush of Horeb, the destruction of Sodom, and the day of judgment.§

In the earlier periods the burning iron was reserved for cases of peculiar atrocity. Thus we find it prescribed by Charlemagne in accusations of parricide,‖ and among the Thuringians it was ordered for women suspected of poisoning or otherwise murdering their husbands,¶ a crime visited with peculiar severity in almost all codes. Subsequently, however, it became rather an aristocratic procedure, as contradistinguished from the water ordeals. This nevertheless was not universal, for both kinds were employed indiscriminately

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* "Si titubaverit, si singulos vomeres pleno pede non presserit, si quantulumcunque læsa fuerit, sententia proferatur." — Annal. Winton. Eccles. (Ducange, s. v. *Vomeres.*)

† Thus, among the Anglo-Saxons, in the "simple ordeal" the iron weighed one pound, in the "triple ordeal" three pounds. The latter is prescribed for incendiaries and "morth-slayers" (secret murderers), Æthelstan, IV. § 6, — for false coining, Ethelred, III. § 7, — for plotting against the king's life, Ethelred, V. § 30, and Cnut, Secular, § 58, — while at a later period, in the collection known as the Laws of Henry I., we find it extended to cases of theft, robbery, arson, and felonies in general, Cap. LXVI. § 9.

‡ Laws of Æthelstan, IV. § 7. — Adjuratio ferri vel aquæ ferventis, Baluze, II. 656. — Even in this minute particular we see the mysterious connection between the superstitions of Europe and those of India. In Malabar, the ordeal of red-hot iron was followed by a similar ceremony; the hand was wrapped up with linen soaked in rice-water, sealed by the king, and opened three days afterward for examination. (Collin de Plancy, *op. cit.* 228.)

§ For instance, see various forms of exorcism given by Baluze, II. 651 - 654.

‖ Capit. Carol. Mag. II. Ann. 803, cap. 5.

¶ L. Anglior. et Werinor. Tit. XIV.

by the Anglo-Saxons,* and at a later period throughout Germany; † while in the Assises de Jerusalem the hot iron is the only form alluded to as employed in the *roturier* courts,‡ and as early as 847 the Council of Mayence indicates it especially for slaves.§ Notwithstanding this, we find it to have been the mode usually selected by persons of rank when compelled to throw themselves upon the judgment of God. The Empress Richarda, wife of Charles le Gros, accused in 887 of adultery with Bishop Liutward, offered to prove her innocence either by the judicial combat or the red-hot iron.‖ The tragical tradition of Mary, wife of the Third Otho, contains a similar example, with the somewhat unusual variation of an accuser undergoing an ordeal to prove a charge. The Empress, hurried away by a sudden and unconquerable passion for Amula, Count of Modena, in 996, repeated in all its details the story of Potiphar's wife. The unhappy Count, unceremoniously condemned to lose his head, asserted his innocence to his wife, and entreated her to clear his reputation. He was executed, and the Countess, seeking an audience of the Emperor, disproved the calumny by carrying unharmed the red-hot iron, when Otho, convinced of his rashness by this triumphant vindication, immediately repaired his injustice by consigning his Empress to the stake.¶ When Edward the

* Laws of Æthelred, IV. § 6, — where the accuser had the right to select the mode in which the ordeal should be administered.

† The Jur. Provin. Alaman. (Cap. XXXVII. §§ 15, 16; Cap. CLXXXVI. §§ 4, 6, 7; Cap. CCCLXXIV.) allows thieves and other malefactors to select the ordeal they prefer. The Jur. Provin. Saxon. (Lib. I. Art. 39) affords them in addition the privilege of the duel.

‡ Baisse Court, Cap. 132, 261, 279, 280, etc.

§ "Si Presbyterum occidit, si liber est, cum XII. juret; si autem servus, per XII. vomeres ferventes se expurget." (Ducange, s. v. *Vomeres*.)

‖ Regino, Ann. 887. — Annales Metenses.

¶ Gotfridus Viterbiensis, Pars XVII. "De Tertio Othone Imperatore." Siffridi Epit. Lib. I. Ann. 998. The story is not mentioned by any contemporary authorities, and Muratori has well exposed its improbability (Annali d' Italia, Ann. 996). In convicting the Empress of calumny, the Countess of Modena appeared as an accuser, making good the charge by the ordeal; but if we look upon her as simply vindicating her husband's character, the case enters into the ordinary course of such affairs. Indeed, among the Anglo-Saxons there was a special provision by which the friends of an executed criminal might clear his reputation by undergoing the triple ordeal, after depositing pledges, to be forfeited in case of defeat. Ethelred, III. § 6.

Confessor, who entertained a not unreasonable dislike to his mother Emma, listened eagerly to the accusation of her criminal intimacy with Alwyn, Bishop of Winchester, she was condemned to undergo the ordeal of the burning shares, and walking over them barefooted and unharmed, she established beyond peradventure the falsehood of the charge.* Robert Curthose, son of William the Conqueror, while in exile during his youthful rebellion against his father, formed an intimacy with a pretty girl. Years afterwards, when he was Duke of Normandy, she presented herself with two likely youths, whom she asserted to be pledges of the Duke's former affection. Robert was incredulous; but the mother, carrying unhurt the red-hot iron, forced him to forego his doubts, and to acknowledge the paternity of the boys, whom he thenceforth adopted.† Remy, Bishop of Dorchester, when accused of treason against William the Conqueror, was cleared by the devotion of a follower, who underwent the ordeal of hot iron.‡ About the same period, Centulla IV. of Béarn caused it to be employed in a dispute with the Bishop of Lescar concerning the fine paid for the murder of a priest, the ecclesiastic, as usual, being victorious.§ But perhaps the instance of this ordeal most notable in its results was that by which Bishop Poppo, in 962, succeeded in convincing and converting the Pagan Danes. The worthy missionary, dining with King Harold Blaatand, denounced, with more zeal than discretion, the indigenous deities as lying devils. The King dared him to prove his faith in his God, and on his assenting, caused next morning an immense piece of iron to be duly heated, which the undaunted Poppo grasped and carried round to the satisfaction of the royal circle, displaying his hand unscathed by the glowing metal. The miracle was sufficient, and Denmark thenceforth becomes an integral portion of Christendom.‖

No form of ordeal was more thoroughly introduced through-

* Rapin, Hist. d'Angleterre, I. 123.
† Ordericus Vitalis, Lib. X. cap. 13.
‡ Roger of Wendover, Ann. 1085.
§ Mazure et Hatoulet, Fors de Béarn, p. xxxviii.
‖ Widukindi Lib. III. cap. 65; Sigebert. Gemblac. Ann. 966.

out the whole extent of Europe. From Spain to Constantinople, and from Scandinavia to Naples, it was appealed to with confidence as an unfailing mode of ascertaining the will of Heaven. The term "judicium," indeed, was at length understood to mean an ordeal, and generally that of hot iron, and in its barbarized form, "juise," may almost always be considered to indicate this particular kind. In the code of the Frankish kingdoms of the East, it is the only mode alluded to, except the duel, and it there retained its legal authority long after it had become obsolete elsewhere. The Assises de Jerusalem were in force in the Venetian colonies until the sixteenth century, and the manuscript, preserved officially in the archives of Venice, described by Morelli as written in 1436, retains the primitive directions for the employment of the *juise*.* Even the Venetian translation, commenced in 1531 and finished in 1536, is equally scrupulous, although an act of the Council of Ten, April 10th, 1535, shows that these customs had fallen into desuetude and had been formally abolished.† We may therefore be justified in assuming that in fact it had previously been abandoned in the East about the same time that it was disused in the West, in the first half of the thirteenth century, though doubtless occasional instances of its employment may have occurred, as we find them in Germany until the seventeenth or eighteenth century.

The ordeal of fire was sometimes administered directly, without the intervention of water or of iron; and in this, its simplest form, it may be considered the origin of the proverbial expression, "J'en mettrai le doigt au feu," as an affirmation of positive belief,‡ showing how thoroughly the whole system engrained itself in the popular mind. The earliest legal allusion to it occurs in the code of the Ripuarian Franks, where it is prescribed in some cases of doubt, as applicable to slaves and strangers.§ From the phraseology of

* This text is given by Kausler, Stuttgard, 1839, together with an older one compiled for the lower court of Nicosia. It is to this edition that our references are made.

† Pardessus, Us et Coutumes de la Mer, I. 268 et seq.

‡ Thus Rabelais, "en mon aduiz elle est pucelle, toutesfoys ie nen vouldroys mettre mon doigt on feu." Pantagruel, Lib. II. Chap. XV.

§ "Quodsi servus in ignem manum miserit, et læsam tulerit," etc. — Tit. XXX.

these passages, we may conclude that it was then administered by placing the hand of the accused in a fire. Subsequently, however, it was conducted on a larger and more impressive scale; huge pyres were built, and the individual undergoing the trial literally walked through the flames. The celebrated Petrus Igneus gained his surname and reputation by an exploit of this kind, which attracted great attention in its day. Pietro di Pavia, Bishop of Florence, unpopular with the citizens, but protected by Godfrey, Duke of Tuscany, was accused of simony and heresy. Being acquitted by the Council of Rome, in 1063, and the offer of his accusers to prove his guilt by the ordeal of fire being refused, he endeavored to put down his adversaries by tyranny and oppression. Great disturbances resulted, and at length, in 1067, the monks of Vallombrosa, who had received and sheltered many exiled brothers, resolved to decide the question by the ordeal, incited thereto by no less than three thousand enthusiastic Florentines, who assembled there for the purpose. Pietro Aldobrandini, a monk of Vallombrosa, urged by his superior, the holy S. Giovanni Gualberto, offered himself to undergo the trial. After imposing religious ceremonies, he walked slowly between two piles of blazing wood, ten feet long, five feet wide, and four and a half feet high, the passage between them being six feet wide and covered with an inch or two of glowing coals. The violence of the flames agitated his dress and hair, but he emerged without hurt, even the hair on his legs being unsinged, barelegged and barefooted though he was. A formal statement of the facts was sent to Rome by the Florentines, the Papal court gave way, and the Bishop was deposed; while the monk who had given so striking a proof of his steadfast faith was marked for promotion, and eventually

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Cap. I.; also Tit. XXXI. If we may credit Cedrenus (Compend. Histor. Ann. 16 Anastasii), as early as the year 507, under the Emperor Anastasius, a Catholic bishop, who had been worsted in a theological dispute with an Arian, vindicated his tenets by standing in the midst of a blazing bonfire, and thence addressing an admiring crowd; but Cedrenus being a compiler of the eleventh century, and zealous in his orthodoxy, the incident can hardly be thought to possess much historical authority, and only illustrates the age of the writer, not that attributed to the occurrence.

died Cardinal of Albano.* An example of a similar nature occurred in Milan, in 1103, when the Archbishop Grossolano was accused of simony by a priest named Liutprand, who, having no proof to sustain his charge, offered the ordeal of fire. In the Piazza di S. Ambrosia he accordingly traversed a blazing pile of huge dimensions, receiving only a slight burn on one hand and one foot, which being claimed as a victory, Grossolano was obliged to retire to Rome. Pascal II., however, received him graciously, and the Milanese suffragans disapproved of the summary conviction of their metropolitan, — to which they were probably all equally liable. A tumult was excited in Milan, the priest was forced to seek safety in flight, and Grossolano was restored.†

But the experiment was not always so successful for the rash enthusiast. In 1098, during the first Crusade, after the capture of Antioch, when the Christians were in turn besieged in that city, and, sorely pressed and famine-struck, were well-nigh reduced to despair, an ignorant peasant named Peter Bartholomew, a follower of Raymond of Toulouse, announced a series of visions in which St. Andrew and the Saviour had revealed to him that the lance which pierced the side of Christ lay hidden in the church of St. Peter. After several men had dug in the spot indicated, from morning until night, without success, Peter leaped into the trench, and by a few well-directed strokes of his mattock exhumed the priceless relic, which he presented to Count Raymond. Cheered by this, and by various other manifestations of Divine assistance, the Christians gained heart, and defeated the Infidels with immense slaughter. Peter became a man of mark, and had fresh visions on all important conjunctures. Amid the jealousies and dissensions which raged among the Frankish chiefs, the possession of the holy lance vastly increased Raymond's importance, and rival princes were found to assert that it was merely a rusty Arab weapon, hidden for the occasion, and wholly undeserving the veneration of which it was the object. At length, after some months, during the leisure of the siege

* Fleury, Hist. Ecclésiastique, Liv. LXI.; Muratori, Annali d' Italia, Ann. 1067.

† Muratori, *op. cit.*, Ann. 1103.

of Archas, the principal ecclesiastics in the camp investigated the matter, and Peter, taunted by the doubts expressed as to his veracity, offered to vindicate the identity of the relic by the fiery ordeal. He was taken at his word, and after three days allowed for fasting and prayer, a pile of dry olive-branches was made, fourteen feet long and four feet high, with a passage-way one foot wide. In the presence of forty thousand men all eagerly awaiting the result, Peter, bearing the object in dispute, and clothed only in a tunic, boldly rushed through the flames, amid the anxious prayers and adjurations of the multitude. As the chroniclers lean to the side of the Neapolitan Princes or of the Count of Toulouse, so do their accounts of the event differ; the former asserting that Peter sustained mortal injury in the fire; the latter assuring us that he emerged safely, with but one or two slight burns, and that, the crowd enthusiastically pressing round him in triumph, he was thrown down, trampled on, and injured so severely that he died in a few days, asseverating with his latest breath the truth of his revelations. Raymond persisted in upholding the sanctity of his relic, but it was subsequently lost.*

The most remarkable attempt at this kind of ordeal occurred at a period long after the abrogation of the whole system; and though not carried into execution, it is worthy of passing notice, as it may be said to have produced results affecting the destinies of civilization to our own day. When, at the close of the fifteenth century, Savonarola, the precursor of the Reformation, was commencing at Florence the career

* Fulcher. Carnot. Cap. X.; Radulf. Cadomensis, Cap. C., CI., CII., CVIII.; Raimond. de Agiles (Bongars, I. 150–168). The latter was chaplain of the Count of Toulouse, and a firm asserter of the authenticity of the lance. He relates with pride, that on its discovery he threw himself into the trench and kissed it while the point only had as yet been uncovered. He likewise officiated at the ordeal, and delivered the adjuration as Peter entered the flames: "Si Deus omnipotens huic homini loquutus est facie ad faciem, et beatus Andreas Lanceam Dominicam ostendit ei, cum ipse vigilaret, transeat iste illæsus per ignem. Sin autem aliter est, et mendacium est, comburatur iste cum lancea quam portabit in manibus suis." Raoul de Caen, on the other hand, became in 1107 secretary to the chivalrous Tancred, and thus obtained his information from the opposite party. He is very decided in his animadversions on the discoverers. Fulcher de Chartres was chaplain to Baldwin I. of Jerusalem, and seems impartial, though sceptical.

which Luther afterwards accomplished, and was gradually throwing off all reverence for the infamous Borgia, who then occupied the chair of St. Peter, he challenged any of his adversaries to undergo with him the ordeal of fire, to test the truth of his propositions that the Church needed a thorough reformation, and that the excommunication pronounced against him by the Pope was null and void. In 1497 the Franciscan, Francesco di Puglia, an ardent opponent, accepted the challenge, but left Florence before the preliminaries were arranged. On his return, in the following year, the affair was again taken up; but the principals readily found excuses to devolve the dangerous office on enthusiastic followers. Giuliano Rondinelli, another Franciscan, agreed to replace his companion, declaring that he expected to be burned alive; while on the other side the ardor was so great that two hundred and thirty-eight Dominicans and numberless laymen subscribed a request to be permitted to vindicate their cause by triumphantly undergoing the trial unhurt, in place of Domenico da Peschia, who had been selected as Savonarola's champion. At length, after many preliminaries, the Signiory of Florence assigned the 7th of April, 1498, for the experiment. An immense platform was erected, on which a huge pile of wood was built, charged with gunpowder and other combustibles, and traversed by a narrow passage, through which the champions were to walk. All Florence assembled to see the show; but when everything was ready, quibbles arose about permitting the champions to carry crucifixes, and to have the sacrament with them, the nature of their garments, and other like details, in disputing over which the day wore away, and at vespers the assemblage broke up without result. Each party, of course, accused the other of having raised the difficulties in order to escape the ordeal; and the people, enraged at being cheated of the promised exhibition, and determined to have compensation for it, easily gave credit to the assertions of the Franciscans, who stimulated their ardor by affirming that Savonarola had endeavored to commit the sacrilege of burning the sacrament. In two days they thus succeeded in raising a tumult, during which Savonarola's convent of San Marco was attacked. Not-

withstanding a gallant resistance by the friars, he was taken prisoner, and, after undergoing frightful tortures, was hanged and burned. Thus was repressed a movement which at one time promised to regenerate Italy, and to restore purity to a corrupted Church. The mind loses itself in conjecturing what would have been the result, if the career of Savonarola had not thus been brought to an untimely end; though, while fully acknowledging his genius and fervor, we must admit that he was not of the stuff of which the leaders of mankind are fashioned.*

It will be observed that the ordeal of fire was principally affected by ecclesiastics in church affairs, perhaps because it was of a nature to produce a powerful impression on the spectators, while at the same time it could no doubt in many instances be managed to secure the desired results by those who controlled the details. In like manner, it was occasionally employed on inanimate matter to decide points of faith or polity. Thus, in the question which excited great commotions in Spain in 1077, as to the substitution of the Roman for the Gothic or Mozarabic rite, after a judicial combat had been fought and determined in favor of the national ritual, the partisans of the former continuing to urge its pretensions, the ordeal of fire was appealed to; a missal of each kind was committed to the flames, and, to the great joy of all patriotic Castilians, the Gothic offices escaped unconsumed.† A somewhat similar instance occurred in Constantinople as late as the close of the thirteenth century, when Andronicus II., on his accession, found the city torn into factions relative to the patriarchate, arising from the expulsion of Arsenius, a former patriarch. All attempts to soothe the dissensions proving vain, at length

* We have principally followed a very curious and characteristic account of the "Sperimento del Fuoco," contained in a Life of Savonarola by the P. Pacifico Burlamacchi, given by Mansi in his edition of the Miscellanea of Baluze, I. 530 et seq. Burlamacchi, as a friend and ardent follower of the reformer, of course throws all the blame of defeating the ordeal on the quibbles raised by the Franciscans, while the Diary of Burchard, master of ceremonies of the Papal Chapel to Borgia (quoted by Bayle, Dict. Hist. s. v. *Savonarola*, Note G), roundly asserts the contrary. Guicciardini (Lib. III. Cap. VI.) briefly states the facts, without venturing an opinion, except that the result utterly destroyed the credit of Savonarola, and enabled his enemies to make short work with him.

† Ferreras, Hist. Gen. d'Espagne, trad. d'Hermilly, III. 245.

both parties agreed to write out their respective statements and arguments, and, committing both books to the flames, to abide by the result, each side hoping that its manuscript would be preserved by the special interposition of Heaven. The ceremony was conducted with imposing state, and, to the general surprise, both books were reduced to ashes. Singularly enough, all parties united in the sensible conclusion that God had thereby commanded them to forget their differences, and to live in peace.*

The genuineness of relics was often tested in this manner by exposing them to the action of fire. When in 1065 the pious Ægelwin, Bishop of Durham, miraculously discovered the relics of the holy martyr, King Oswyn, he gave the hair to Judith, wife of Tosti, Earl of Northumberland, and she with all reverence placed it on a raging fire, whence it was withdrawn, not only uninjured, but marvellously increased in lustre, to the great edification of all beholders.† Guibert de Nogent likewise relates, that, when his native town became honored with the possession of an arm of St. Arnoul, the inhabitants, at first doubting the authenticity of the precious relic, cast it into the flames; when it vindicated its sanctity, not only by being fire-proof, but also by leaping briskly away from the coals, — testimony which was held to be incontrovertible.‡

The cold-water ordeal (*judicium aquæ frigidæ*) differed from most of its congeners in requiring a miracle to convict the accused, as in the natural order of things he escaped. The preliminary solemnities, fasting, prayer, and religious rites, were similar to those already described; the reservoir of water, or pond, was then exorcised with formulas exhibiting the same combination of faith and impiety, and the accused, bound with cords, was lowered into it with a rope, to prevent fraud if guilty, and to save him from drowning if innocent,§

* Niceph. Gregor. Lib. VI.

† Matthew of Westminster, Ann. 1065.

‡ Guibert. Noviogent. de Vita sua, Lib. III. Cap. XXI.

§ "Ne aut aliquem possit fraudem in judicio facere, aut si aqua illum velut innoxium reciperit, ne in aqua pericletetur, ad tempus valeat retrahi." — Hincmar. de Divort. Lothar. Interrog. VI. It may readily be supposed that a skilful man-

the length of rope allowed under water being an ell and a half, according to the Anglo-Saxon rule.*

The basis of this ordeal was the superstitious belief that the pure element would not receive into its bosom any one stained with the crime of a false oath, a belief which we have seen was entertained in primeval India, and which bears considerable resemblance to the kindred superstition of old, that the earth would eject the corpse of a criminal, and not allow it to remain quietly interred. The ecclesiastical doctrines on the subject are clearly enunciated by Hincmar: "He who seeks to conceal the truth by a lie will not sink in the waters over which the voice of the Lord hath thundered; for the pure nature of water recognizes as impure, and rejects as incompatible, human nature which, released from falsehood by the waters of baptism, becomes again infected with untruth." † The baptism in the Jordan, the passage of the Red Sea, and the crowning judgment of the Deluge, were freely adduced in support of the theory, though these latter were in direct contradiction to it, and the most figurative language was boldly employed to give some show of probability to the results expected. Thus, in St. Dunstan's elaborate formula, the prayer offered over the water metaphorically adjures the Supreme Being, — "Let not the water receive the body of him who, released from the weight of goodness, is upborne by the wind of iniquity!" ‡

Although the use of this form of ordeal prevailed whenever the judgment of God was appealed to, and although it enjoyed a later existence than any of its kindred practices, it was the last to make its appearance in Europe. There seems to

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agement of the rope might easily produce the appearance of floating, when a conviction was desired by the priestly operators.

* "Et si judicium aque frigide sit, tunc immergatur una ulna et dimidia in fune." — L. Æthelstani, I. Cap. XXIII.

† "Qui veritatem mendacio cupit obtegere, in aquis, super quas vox Domini Dei majestatis intonuit, non potest mergi, quia pura natura aquæ naturam humanam per aquam baptismatis ab omni mendacii figmento purgatam, iterum mendacio infectam, non recognoscit puram, et ideo eam non recipit, sed rejicit ut alienam." — De Divort. Lothar. Interrog. VI.

‡ "Nec patiantur recipere corpus, quod ab onere bonitatis evacuatam, ventus iniquitatis allevavit ac inane constituit." — Ordo S. Dunstani Dorobern. (Baluze, II. 650.)

be good reason for attributing its introduction as a Christian mode of trial to Pope Eugenius II., who occupied the pontifical throne from 824 to 827, although some critics have denied to it this paternity, on what appear to us insufficient grounds. Baluze gives a formula for conducting it which is thought to be of the ninth century, and which expressly states that Eugenius invented it at the request of Louis le Débonnaire, as a means of repressing the prevalent vice of perjury, and another manuscript to which Mabillon attributes the same date makes a similar assertion.* All this derives additional probability from the fact that the cold-water ordeal is not alluded to in any of the codes or laws anterior to the ninth century, while it is continually referred to in subsequent ones; and another evidence of weight is afforded by St. Agobard, Archbishop of Lyons, who, in his celebrated treatise against the judgment of God, written a few years before the accession of Eugenius, while enumerating and describing the various modes in use, says nothing about that of cold water.† The only arguments alleged in favor of an earlier date are certain passages in Gregory of Tours, describing miracles in which saintly personages condemned to be drowned floated triumphantly ashore,—cases which have evidently nothing to do with the question, as they were interpositions of Providence to save, not to condemn, and were cases of punishment, not legal investigations.‡

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* "Hoc judicium autem, petente Domno Hludovico Imperatore, constituit beatus Eugenius, ... ne perjuri super reliquias sanctorum perdant suas animas in malum consentientes."—Baluze, II. 646. "Hoc autem judicium creavit omnipotens Deus, et verum est; et per Domnum Eugenium Apostolicum inventum est."—Mabillon, Analecta, pp. 161, 162, ap. Cangium. The same assertion is made in several other rituals which are given at length by Muratori, Antiq. Ital., Dissert. 38; and by Juretus, Observat. ad Ivon. Epist. 74.

† "Non oportet . . . . suspicari quod omnipotens Deus occulta hominum in præsenti vita per aquam calidam aut ferrum revelari velit; quanto minus per crudelia certamina?"—Lib. adv. L. Gundobadi, Cap. IX. And again in the Liber contra Judicium Dei, Cap. I.: "Mitte unum de tuis, qui congrediatur mecum singulari certamine, ut probet me reum tibi esse, si occiderit; aut certe, jube ferrum vel aquas calefieri, quas manibus illæsus attrectem; aut constitue cruces, ad quas stans immobilis perseverem."

‡ The Epistle given in Gratian (C. Mennam caus. 2. 9. 4) as written by St. Gregory to Queen Brunhilda, scarcely needs a reference, its allusions to the ordeal having long since been restored to their true author, Alexander II.

The new process had a hard struggle for existence. But a few years after its introduction, it was condemned by Louis le Débonnaire at the Council of Worms, in 829; its use was strictly prohibited, and the "missi dominici" were instructed to see that the order was carried into effect, — regulations which were repeated by the Emperor Lothair, son of Louis.* Notwithstanding this, it seemed to adapt itself to popular prejudices, and the interdiction was of little avail. Its use spread throughout Europe, and among all the Continental races it was placed on an equal footing with the other forms of ordeal. Among the Anglo-Saxons, indeed, its employment has been called in question by some modern writers; but the Dooms of Æthelstan, and the formula of St. Dunstan of Canterbury, already quoted, sufficiently manifest its existence in England before the Conquest.

The ordeals of both hot and cold water were stigmatized as plebeian from an early period, as the red-hot iron and the duel were patrician. Thus Hincmar in the ninth century alludes to the former as applicable to persons of servile condition; † a constitution of the Emperor St. Henry II. (about A. D. 1000) in the Lombard law has a similar bearing; ‡ an Alsatian document in the eleventh, and the laws of Scotland in the twelfth century, assume the same position,§ and Glanville at the end of the twelfth century expressly asserts it.‖ This, however, was an innovation; for in the earliest codes there is no such distinction, a provision in the Salique law even prescribing the *æneum*, or hot-water ordeal, for the

* "Ut examen aquæ frigidæ, quæ hactenus fiebat, a missis nostris omnibus modis interdicatur, ut non ulterius fiat." — Capit. Wormat. Ann. 829, Tit. II. cap. 12; L. Longobard. Lib. II. Tit. LV. § 31.

† "Ut si præfati sui homines quia non liberæ conditionis sunt, aut cum aqua frigida, aut cum aqua calida, inde ad judicium Dei exirent, quid inde Deus ostenderet mihi sufficeret." — Opusc. adv. Hincmar. Laudun. Cap. XLIII.

‡ "Si quis ..... accusatus negare voluerit, aut per duellum si liber est; si vero servus, per judicium ferventis aquæ defendat se." — L. Longobard. Lib. I. Tit. IX. § 39.

§ Conventus Alsat., Anno 1051, § 6; Regiam Majestatem, Lib. IV. Cap. III. § 4 (ap. Cangium).

‖ "In tali autem causa tenetur se purgare is qui accusatur per dei judicium ..... scilicet per ferrum calidum si fuerit homo liber, per aquam si fuerit rusticus." — De Legg. Angliæ, Lib. XIV. Cap. I.

Antrustions, who constituted the most favored class in the state.* Nor even in later times was the rule by any means absolute. In the tenth century, Sanche, Duke of Gascony, desirous of founding the monastery of Saint Sever, claimed some land which was necessary for the purpose, and being resisted by the possessor, the title was decided by reference to the cold-water ordeal.† In 1027, Guelf II., Count of Altorf, ancestor of the great houses of Guelf in Italy and England, having taken part in the revolt of Conrad the Younger and Ernest of Suabia, was forced by the Emperor Conrad the Salique to prove his innocence in this manner.‡ This may have been, perhaps, intended rather as a humiliation than as a judicial proceeding, for Guelf had been guilty of great excesses in the conduct of the rebellion; but we find, nearly two centuries later, when all the vulgar ordeals were falling into disuse, that the water ordeal was established among the nobles of Southern Germany, as the mode of deciding doubtful claims on fiefs.§

Although the cold-water ordeal disappears from the statute-book in civil and in ordinary criminal actions at the same time that the other similar modes of purgation were abandoned, there is one class of cases in which it maintained its hold upon the popular faith to a much later period. These were the accusations of sorcery and witchcraft which form so strange and prominent a feature of mediæval society, and its use for this purpose may apparently be traced to various causes. For such crimes, drowning was the punishment inflicted by the customs of the Franks, as soon as they had lost the respect for individual liberty of action which excluded personal punishments from their original code; || and

* Text. Herold. Tit. LXXVI.

† Mazure et Hatoulet, Fors de Béarn, p. xxxi.

‡ Conrad. Ursperg., sub Lothar. Saxon.

§ Juris Feud. Alaman. Cap. LXXVII. § 2.

|| "Lodharius . . . . . Gerbergam, *more maleficorum*, in Arari mergi præcepit." — Nithardi Hist. Lib. I. Ann. 834.

The Salique law merely inflicts fines in cases of witchcraft, even when the offender had, according to a widely spread superstition of the times, eaten the victim bodily. (L. Emendat. Cap. XXI. § 3; Cap. LXVII. § 3.) So also the L. Ripuarior. (Tit. LXXXIII.) Charlemagne allowed suspected persons to be tortured for confession, provided the process was not carried to the point of death,

in addition to the general belief that the pure element refused to receive those who were tainted with crime, there was in this special class of cases a widely spread belief that those who became adepts in sorcery and magic lost their specific gravity. Pliny mentions a race of enchanters on the Euxine who were lighter than water, — "eosdem non posse mergi . . . . . ne veste quidam degravatos"; and Stephanus Byzantinus describes the inhabitants of Thebe as magicians who could kill with their breath, and floated when thrown into the sea.* This whimsical opinion was perpetuated to a comparatively late period, and gave rise to a species of ordeal known as the *trial by balance*, in which the suspected sorcerer was weighed to ascertain his guilt, enabling him, we

and after conviction they were to be imprisoned until amendment. (Capit. I. Ann. 805, Cap. XXV.) The legislation of other races was very various in this respect. The Ostrogoths visited all such practices with death (Cod. Theoderici, Cap. CVIII.), relaxing somewhat on the laws of Constantine, who sought to extirpate them with fire and torments (Const. 3, 6, 7; C. De Maleficis. IX. 18). The Wisigoths more humanely contented themselves with stripes, shaving the head, and exposure (L. Wisigoth. Lib. VI. Tit. II. cap. 3). The Lombard law (Lib. II. Tit. XXXVIII. § 2) ordered them to be sold as slaves beyond the boundaries of the province, and the earliest legislator, King Rotharis, denounced severe penalties against those who put women to death under the absurd belief that they could eat living men. "Quod Christianis mentibus nullatenus est credendum, nec possibile est, ut hominem mulier vivum intrinsecus possit comedere." (L. Longobard. Lib. I. Tit. XI. § 9.) The Pagan Saxons entertained a similar superstition, for which they were in the habit of burning witches and sorcerers, as we learn from the civilizing and Christianizing capitulary of Charlemagne: "Si quis, a diabolo deceptus, crediderit, secundum morem paganorum, virum aliquem aut feminam strigam esse et homines comedere, et propter hoc ipsam incenderit," etc. (Capit. de Partibus Saxoniæ, Ann. 789, Cap. VI.) The Anglo-Saxons merely banished the witch who would not reform, with the penalty of death for disobedience (Laws of Edward and Guthrum, Tit. XI.; Ethelred, VI. § 7; Cnut Secular, Cap. IV.); unless the death of a victim had been compassed, when the offender was executed (Æthelstan, I. § 6), or delivered to the kindred to be punished at their pleasure (Henrici I. Tit. LXXI. § 1).

The cause of humanity gained but little when, all such accusations being included in the convenient general charge of heresy, for five hundred years luckless sharpers and dupes were committed pitilessly to the flames. Even in the enlightenment of the seventeenth century, who can read without grim mirth and wonder the terrible farce of the trial of Urbain Grandier, hurrying, amid details ludicrously revolting, its unfortunate victim through torture to the stake, to retrieve the worthless reputation of some *filles perdues?*

Perhaps the superstition of the devouring of living men by witches may find its last lingering remnants in the vampirism of Eastern Europe.

* Ameilhon, de l'Épreuve de l'Eau Froide.

may presume, to escape, except when the judges, determined to procure a conviction, managed to elude the vigilance of the inspectors.* To the concurrence of these notions we may attribute the fact, that when the cold-water ordeal was abandoned, in the thirteenth century, as a judicial practice in ordinary cases, it still maintained its place as a special mode of trying those unfortunate persons whom their own folly, or the malice and fears of their neighbors, pointed out as witches and sorcerers.† No less than a hundred years after the efforts of Innocent III. had virtually put an end to all the other forms of vulgar ordeals, we find Louis Hutin ordering its employment in these cases ; ‡ and three hundred years later still, the Parlement of Paris was obliged to exert its authority to prevent ignorant judges from disgracing the seventeenth century by convictions obtained on the strength of this mode of proof. In 1588, an appeal was taken to the supreme tribunal from a sentence pronounced by a Champenois court, ordering a prisoner to undergo the experiment, and the Parlement in December, 1601, registered a formal decree against the practice, — an order which it found necessary to repeat, August 10th, 1641.§ That this latter was not uncalled for, we may assume from the testimony of the celebrated Jerôme Bignon, who, writing nearly at the same time, says that, to his own knowledge, within a few years, judges were in the habit of elucidating doubtful cases in this manner.‖ In the Rhine countries the superstition manifested equal vitality. A treatise written

* Königswarter (*op. cit.* p. 186) states that as late as 1728, at Szegedin in Hungary, thirteen persons suspected of sorcery were, by order of court, subjected to the ordeal of cold water, and then to that of the balance. At Oudewater in Holland, according to the same authority, the scales used on these occasions are still to be seen. A modification of the trial by balance consisted in putting the accused into one scale and a Bible into the other. (Collin de Plancy, s. v. *Bibliomancie.*)

† In earlier times, various other modes of proof were habitually practised. Among the Lombards, King Rotharis prescribed the judicial combat (L. Longobard. Lib. I. Tit. XVI. § 2). The Anglo-Saxons (Æthelstan, Cap. VI.) direct the triple ordeal, which was either red-hot iron or boiling water.

‡ "Ille adversus quem maleficium factum fuerit vel proditio, si alium accusaverit, de quo aliqua suspicio sit curiæ, accusatus recipiet judicium aquæ frigidæ." — Regest. Ludovici Hutini (ap. Cangium).

§ Königswarter, *op. cit.* p. 176.

‖ "Porro, nostra memoria, paucis abhinc annis, solebant judices reos maleficii accusatos mergere, pro certo habentes incertum crimen hac ratione patefieri." — Notæ ad Legem Salicam.

against it in 1585, by Hermann Neuwald, shows that it still required to be combated, while another composed in its defence in 1590, by Rickius, a learned jurisconsult of Cologne, gives evidence that it did not lack advocates, and moreover declares on the title-page that it was then in common use.* We have already alluded to its employment by an Hungarian tribunal as late as the eighteenth century; and though within the last hundred years it has disappeared from the authorized legal procedures of Europe, still the popular mind has not as yet altogether overcome the superstitions and prejudices of so many ages, and occasionally in some benighted spot an outrage occurs to show us that mediæval ignorance and brutality still linger amid the triumphs of modern civilization. In 1815, Belgium was disgraced by a trial of the kind performed on an unfortunate person suspected of witchcraft; and in 1836, the populace of Hela, near Dantzic, twice plunged into the sea an old woman reputed to be a sorceress, and as the miserable creature persisted in rising to the surface, she was pronounced guilty, and beaten to death.†

The ordeal of the cross (*judicium crucis*, *stare ad crucem*) was one of simple endurance. The plaintiff and defendant, after appropriate religious ceremonies and preparation, stood with uplifted arms before a cross, while divine service was performed, victory being adjudged to the one who was able longest to maintain his position.‡ The earliest allusion to it which we have observed occurs in a Capitulary of Pepin le Bref, in 752, where it is prescribed in cases of application for dissolution of marriage by a wife.§ Charlemagne appears to have regarded it with much favor; for he not only frequently refers to it in his Edicts, but, when dividing his mighty empire, in 806, he directs that all territorial disputes which may arise in the future between his sons shall be settled

* The title of the work of Rickius was "Compendiosa certisque modis astricta defensio Probæ, ut loquuntur, Aquæ Frigidæ, qua in examinatione maleficiarum, plerique judices hodie utuntur." (Ap. Cangium.)

† Königswarter, *op. cit.* p. 177.

‡ A formula for judgments obtained in this manner by order of court, in cases of disputed title to land, occurs in the Formulæ Bignonianæ, For. XII.

§ "Si qua mulier se reclamaverit quod vir suus nunquam cum ea mansisset, exeant inde ad crucem, et si verum fuerit, separentur, et illa faciat quod vult." — Capit. Pippini, Ann. 752, Cap. XVII.

in this manner.* An example occurring during his reign shows the details of the process. A controversy between the Bishop and citizens of Verona, relative to the building of certain walls, was referred to the decision of the cross. Two young ecclesiastics, selected as champions, stood before the sacred emblem from the commencement of mass ; at the middle of the Passion, Aregaus, who represented the citizens, fell lifeless to the ground, — "in terram velut exanimis corruit," — while his antagonist, Pacificus, held out triumphantly to the end, and the Bishop gained his cause, as ecclesiastics were wont to do.†

Witnesses too infirm to undergo the battle-trial, by which in the regular process of law they were bound to substantiate their testimony, were allowed, by a Capitulary of 816, to select the ordeal of the cross, with the further privilege, in cases of extreme debility, of substituting a relative or other champion, whose robustness promised an easier task for the Divine interference.‡

A slight variation of this form of ordeal consisted in standing with the arms extended in the form of a cross, while cer tain portions of the service were recited. In this manner, St. Lioba, Abbess of Bischoffsheim, triumphantly vindicated the purity of her flock, and traced out the offender, when the reputation of her convent was imperilled by the discovery of a new-born child drowned in a neighboring pond.§

The sensitive piety of Louis le Débonnaire was shocked at this use of the cross, as tending to bring the Christian symbol into contempt, and in 816, soon after the death of Charle-

* "Si caussa vel intentio sive controversia talis inter partes propter terminos aut confinia regnorum orta fuerit quæ hominum testimonio declarari vel definiri non possit, tunc volumus ut ad declarationem rei dubiæ, judicio crucis, Dei voluntas et rerum veritas inquiratur." — Chart. Division. Cap. XIV. The allusions to it, throughout the Capitularies of this monarch, are very frequent; for instance, Capit. Ann. 779, Cap. X.; Capit. IV. Ann. 803, Cap. III., VI.; In L. Longobard. Lib. II. Tit. XXVIII. § 3; Tit. LV. § 25, etc.

† Ughelli, Italia Sacra, Vol. V. p. 610 (ap. Baluz. Not. ad Libb. Capit.).

‡ "Namque si debiliores ipsi testes fuerint, tunc ad crucem examinentur. Nam si majoris ætatis, et non possint ad crucem stare, tunc mittant aut filios aut parentes, aut qualescunque homines possint, qui pro eis hoc tendunt." — Capit. Lud. Pii, Ann. 816, Cap. I. (Eccardus, L. Francorum, pp. 183, 184.)

§ Rudolph. Fuldens. Vitæ S. Liobæ, Cap. XV. (Ducange, s. v. *Crucis Judicium.*)

magne, he prohibited its continuance, at the Council of Aix-la-Chapelle,* an order which was repeated by his son, the Emperor Lothair.† Baluze, however, considers, with apparent reason, that this command was respected only in the Rhenish provinces and in Italy, from the fact that the manuscripts of the Capitularies belonging to those regions omit the references to the ordeal of the cross, which are retained in the copies used in the other territories of the Frankish empire.‡ Louis himself would seem at length to have changed his opinion; for in his final division of his succession between his sons, he repeats the direction of Charlemagne as regards the settlement of disputed boundaries.§ The procedure, however, appears to have soon lost its popularity, and indeed never to have obtained the wide and deeply-seated hold on the veneration of the people enjoyed by the other forms of ordeal. We see little of it at later periods, except the trace it has left in the proverbial allusion to an *experimentum crucis*.

The ordeal of consecrated bread or cheese (*judicium offæ*, *panis conjuratio*, the *corsnæd* of the Anglo-Saxons) was administered by presenting to the accused a piece of bread (gen-

* "Sancitum est ut nullus deinceps quamlibet examinationem crucis facere præsumat, ne quæ Christi passione glorificata est, cujuslibet temeritate contemptui habeatur." — Concil. Aquis-Gran. Cap. XVII.

† L. Longobard. Lib. II. Tit. LV. § 32.

‡ Notæ ad Libb. Capit. Lib. I. cap. 103. This derives additional probability from the text cited immediately above, relative to the substitution of this ordeal for the duel, which is given by Eckhardt from an apparently contemporary manuscript, and which, as we have seen, is attributed to Louis le Débonnaire in the very year of the Council of Aix-la-Chapelle. It is not a simple Capitulary, but an addition to the Salique Law, which invests it with much greater importance. Lindenbruck (Cod. Legum Antiq. p. 355) gives a different text, purporting likewise to be a supplement to the Law, made in 816, which prescribes the duel in doubtful cases between laymen, and orders the ordeal of the cross for ecclesiastical causes, — "in Ecclesiasticis autem negotiis, crucis judicio rei veritas inquiratur," — and allows the same privilege to the "imbecillibus aut infirmis qui pugnare non valent." Baluze's collection contains nothing of the kind as enacted in 816, but under date of 819 there is a much longer supplement, in which Cap. X. presents the same general regulations, almost verbatim, except that in ecclesiastical affairs the testimony of witnesses only is alluded to, and the *judicium crucis* is altogether omitted. The whole manifestly shows great confusion of legislation.

§ Chart. Divisionis, Ann. 837, Cap. X. The words used are identical with those of Charlemagne, with the substitution of "vexillo crucis" for "judicio crucis." The word *vexillum* frequently had the signification of *signum* or *testimonium* (v. Cangium, *sub voce*).

erally of barley) or of cheese, about an ounce in weight, over which prayers and adjurations had been pronounced. After appropriate religious ceremonies, including the communion, the morsel was eaten, the event being determined by the ability of the accused to swallow it. This depended of course on the imagination, and we can readily understand how, in those times of faith, the impressive observances which accompanied the ordeal would affect the criminal, who, conscious of guilt, stood up at the altar, took the sacrament, and pledged his salvation on the truth of his oath. The mode by which a conviction was expected may be gathered from the forms of exorcism employed, of which a number have been preserved.

"O Lord Jesus Christ, ... grant, we pray thee, by thy holy name, that he who is guilty of this crime in thought or in deed, when this creature of sanctified bread is presented to him for the proving of the truth, let his throat be narrowed, and in thy name let it be rejected rather than devoured. And let not the spirit of the Devil prevail in this to subvert the judgment by false appearances. But he who is guilty of this crime, let him, chiefly by virtue of the body and blood of our Lord which he has received in communion, when he takes the consecrated bread or cheese tremble, and grow pale in trembling, and shake in all his limbs; and let the innocent quietly and healthfully, with all ease, chew and swallow this morsel of bread or cheese, crossed in thy holy name, that all may know that thou art the just Judge," &c.*

A striking illustration of the superstitions connected with this usage is found in the story related by most of the English chroniclers concerning the death of the powerful Godwin, Earl of Kent, father of King Harold, and in his day the king-maker of England. As he was dining with his royal son-in-law, Edward the Confessor, some trivial circumstance caused the king to repeat an old accusation that his brother Alfred had met his death at Godwin's hands. The old but fiery Earl, seizing a piece of bread, exclaimed: "May God cause this morsel to choke me if I am guilty in thought or in deed of this crime." Then the king took the bread and blessed it, and Godwin, putting it in his mouth, was suffocated by it, and fell dead.†

* Exorcismus panis hordeacei vel casei. Baluze, II. 655.

† This account, with unimportant variations, is given by Roger of Wendover,

This form of ordeal never obtained the extended influence which characterizes some of the other modes, and it seems to have been chiefly confined to the populations allied to the Saxon race. In England, before the Conquest, it was enjoined on the lower orders of the clergy,* and it may be considered as a plebeian mode of trial, rarely rising into historical importance. Its vitality, however, is demonstrated by the fact that Lindenbruck, writing in 1613, states that it was then still in frequent use.†

A simplification of this ordeal was the trial by the Eucharist, which indeed may be regarded as bearing a similar relation to all the forms of ordeal, as its administration was invariably a portion of the preparatory ceremony, with the awful adjuration, "Corpus hoc et sanguis Domini nostri Jesu Christi sit vobis ad probationem hodie!" The general use of the sacrament to lend authority and solemnity to transactions, and the binding force it was thought to give to treaties, agreements, and the testimony of witnesses, might seem to remove it in its simplicity from among the list of ordeals proper, were it not for the superstition of the age which believed that, when the consecrated wafer was offered under appropriate invocations, the guilty could not receive it, or that, if it were taken, immediate convulsions and speedy death, or some other miraculous manifestation, ensued. This is well illustrated by a form of exorcism preserved by Mansi: "We humbly pray thy Infinite Majesty that this priest, if guilty of the accusation, shall not be able to receive this venerated body of thy Son, crucified for the salvation of all, and that what should be the remedy of all evil shall prove to him hurtful, full of grief and suffering, bearing with it all sorrow

Ann. 1054, Matthew of Westminster, Ann. 1054, the Chronicles of Croyland, Ann. 1053, Henry of Huntingdon, Ann. 1053, and William of Malmesbury, Lib. II. cap. 13; which shows that the legend was widely spread and generally believed, although the Anglo-Saxon Chronicle, Ann. 1052, and Roger de Hoveden, Ann. 1053, in mentioning Godwin's death, make no allusion to its being caused in this manner.

No great effort of scepticism is requisite to suggest that Edward, tired of the tutelage in which he was held, may have made way with Godwin by poison, and then circulated the story related by the annalists to a credulous generation.

* Dooms of Ethelred, IX. § 22; Cnut, Eccles. Tit. V.

† "Alium examinis modum, nostro etiamnunc sæculo, sæpe malo modo usitatum." — Cod. Legum Antiq. p. 1418.

and bitterness."* What might be expected under such circumstances is elucidated by a case which occurred in the early part of the eleventh century, as reported by Rodolphus Glaber, a contemporary, in which a monk, condemned to undergo the trial, boldly received the sacrament, when the Host, indignant at its lodgment in the body of so perjured a criminal, immediately slipped out at the navel, white and pure as before, to the immense consternation of the accused, who forthwith confessed his crime.†

This was usually a sacerdotal form of purgation, as is shown by the Anglo-Saxon laws,‡ and by the canons of the Councils of Tribur and Worms, directing its employment in all cases of ecclesiastics charged with crimes, to relieve them from the necessity of taking oaths.§ Thus, in 941, Frederic, Archbishop of Mayence, publicly submitted to an ordeal of this kind, to clear himself of the suspicion of having taken part in an unsuccessful rebellion of Henry, Duke of Bavaria, against his brother, Otho the Great.‖ After the death of Henry, slander assailed the fame of his widow, Juthita, on account of an alleged intimacy between her and Abraham, Bishop of Frisingen. When she, too, died, the Bishop performed her funeral rites, and, pausing in the mass, he addressed the congregation: "If she was guilty of that whereof she was accused, may the Omnipotent Father cause the body and blood of the Son to be my condemnation to just perdition, and perpetual salvation to her soul!" — after which he took the sacrament unharmed, and the people acknowledged the falsity of their belief.¶

Perhaps the most striking instance recorded of its adminis-

* Baluz. Miscell. II. 575.

† Lib. V. cap. 1. Somewhat similar is the story of a volunteer miracle vouchsafed to an unchaste priest at Lindisfarne, who being suddenly summoned to celebrate mass without having time to purify himself, when he came to partake of the sacramental cup, saw the wine change to an exceeding blackness. After some hesitation he took it, and found it bitter to the last degree. Hurrying to his bishop, he confessed his sin, underwent penance, and reformed his life. (Roger of Wendover, Ann. 1051.)

‡ Dooms of Ethelred, X. § 20; Cnut, Eccles. Tit. V.

§ Ducange, s. v. *Eucharistia.*

‖ Reginonis Continuat. Ann. 941.

¶ Dithmari Chron. Lib. II.

tration was, however, in a secular matter, when in 869 it closed the unhappy controversy between King Lothair and his wives, to which reference has already been made. To reconcile himself to the Church, Lothair took a solemn oath before Adrian II. that he had obeyed the ecclesiastical mandates in maintaining a complete separation from his pseudo-wife Waldrada, after which the Pontiff admitted him to communion, under an adjuration that it should prove the test of his truthfulness. Lothair did not shrink from the ordeal, nor did his nobles, to whom it was given on their declaring that they had not abetted the designs of the concubine; but, leaving Rome immediately afterward, the royal *cortége* was stopped at Placentia by a sudden epidemic which broke out among the courtiers, and there Lothair died, August 8th, with nearly all of his followers, — an awful example held out by the worthy chroniclers as a warning to future generations, "for he who eats and drinks it unworthily, eats and drinks his own condemnation."*

In this degradation of the Host to the level of daily life there was a profanity which could hardly fail to disgust a reverential mind, and we are therefore not surprised to find King Robert the Pious, in the early part of the eleventh century, raising his voice against its judicial use, and threatening to degrade the Archbishop of Sens for employing it in this manner, especially as his biographer informs us that the custom was daily growing in favor.† Robert's example was soon afterward imitated by Alexander II., who occupied the pontifical chair from 1061 to 1073.‡ The next Pope, however, the impetuous Hildebrand, made use of it on a memorable occasion, and in a manner productive of lasting results. When in 1077 the unhappy Emperor Henry IV. had endured the depths of humiliation before the arrogant Pontiff's castle gate at Canosa, and had at length purchased peace by submitting to all the exactions demanded of him, the excommunication under which he had lain was removed in the chapel.

* Regino, Ann. 869; Annal. Bertiniani. "But let a man examine himself, and so let him eat of that bread and drink of that cup, for he that eateth and drinketh unworthily, eateth and drinketh damnation to himself, not discerning the Lord's body." — 1 Corinth. xi. 28, 29.

† Helgaldi Epitome Vitæ Roberti Regis. ‡ Duclos, Mémoire sur les Épreuves.

Then Gregory, referring to the crimes imputed to himself by the Emperor's partisans, said that he could easily refute them by abundant witnesses; "but lest I should seem to rely rather on human than divine testimony, and that I may remove from the minds of all, by immediate satisfaction, every scruple, behold this body of our Lord which I am about to take. Let it be to me this day a test of my innocence, and may the Omnipotent God this day by his judgment absolve me of the accusations if I am innocent, or let me perish by sudden death, if guilty!" Swallowing the wafer, he turned to the Emperor, and demanded of him the same refutation of the charges urged against him by the German princes. Appalled by this unexpected trial, Henry in an agony of fear evaded it, and, trembling, consulted hurriedly with his councillors how to escape the awful test. Finally he declined, on the ground of the absence of both his friends and his enemies, without whose presence the result would establish nothing; and thus, to avoid the present danger of his imagination, he promised to submit to a trial by the Imperial Diet. By this he lost the results so dearly bought by his sacrifices and humiliations, and perpetuated the civil strife, to put an end to which he had labored and endured so much.*

The ordeal of the lot left the decision to pure chance, in the hope that Heaven would interpose to save the innocent and punish the guilty. We may assume that this was extensively practised in Pagan times, but that, on the introduction of Christianity, it gradually became obsolete, as the various

* Lambert. Schaffnab. Ann. 1077. — In estimating the mingled power of imagination and conscience which rendered the proposal insupportable to the Emperor, we must allow for the influence which a man like Hildebrand with voice and eye can exert over those whom he wishes to impress. At an earlier stage of his career, in 1055, he improvised a very effective species of ordeal, when presiding as Papal legate at the Council of Lyons, assembled for the repression of simony. A guilty Bishop had bribed the opposing witnesses, and no testimony was obtainable for his conviction. Hildebrand addressed him: "The episcopal grace is a gift of the Holy Ghost. If, therefore, you are innocent, repeat, 'Glory to the Father, and to the Son, and to the Holy Ghost!' The Bishop boldly commenced, "Glory to the Father, and to the Son, and to —" Here his voice failed him, he was unable to finish the sentence; and, confessing the sin, he was deposed. This anecdote rests on good authority. Peter Damien states that he had it from Hildebrand himself, and Calixtus II. was a witness of the scene. (Fleury, Hist. Eccléss. Liv. LX.)

modes of appealing to the Deity, which are described above, gradually acquired importance, and threw the less impressive reference to the lot into insignificance. The only allusions to it occur in the earlier laws, and no trace of it is to be met with in the subsequent legislation of any race. Mention of it is made in the Ripuarian code,* and in some of the earlier Merovingian documents its use is prescribed in the same brief manner.† No explanation is given of the details of the process by which this appeal to fortune was made, and we know of no contemporary applications by which we can investigate its formula; but in the primitive Frisian laws there is described a singular ordeal of chance, which may reasonably be assumed to bear some relation to it. When a man was killed in a chance-medley and the murderer remained unknown, the friends had a right to accuse seven of the participants in the brawl. Each of these defendants had then to take the oath of denial with twelve conjurators, after which they were admitted to the ordeal. Two pieces of twig, precisely similar, were taken, one of which was marked with a cross; they were then wrapped up separately in white wool and laid on the altar; prayers were recited, invoking God to reveal the innocence or guilt of the party, and the priest, or a sinless youth, took up one of the bundles. If it contained the marked fragment, the defendants were absolved; if the unmarked one, the guilty man was among them. Each one then took a similar piece of stick and made a private mark upon it; these were rolled up as before, placed on the altar, taken up one by one, and unwrapped, each man claiming his own. The one whose piece was left to the last was pronounced guilty, and was obliged to pay the wehr-gild of the murder.‡ The various modes of ecclesiastical divination,

* "Ad ignem seu ad sortem se excusare studeat." — Tit. XXXI. § 5.

† Pactus Childeberti et Chlotarii, Ann. 593, § 5: "Et si dubietas est, ad sortem ponatur." Also § 8: "Si litus de quo inculpatur ad sortem ambulaverit." As in § 4 of the same document the *œneum* or hot-water ordeal is provided for freemen, it is possible that the lot was reserved for slaves. This, however, is not observed in the Decretio Chlotarii, Ann. 595, § 6, where the expression, "Si de suspicione inculpatur, ad sortem veniat," is general in its application, without reservation as to station.

‡ L. Frision. Tit. XIV. §§ 1, 2. This may not improbably be derived from the

so frequently used in the Middle Age to obtain an insight into the future, sometimes assumed the shape of an appeal to Heaven to decide questions of the present or of the past. Thus when three bishops, of Poitiers, Arras, and Autun, each claimed the holy relics of St. Liguaire, and human means were unavailing to reconcile their pretensions, the decision of the Supreme Power was resorted to, by placing under the altar-cloth three slips with their respective names inscribed, and after a becoming amount of prayer, on withdrawing one of them, the See of Poitiers was enriched with the precious remains by Divine favor.*

The superstition that, at the approach of a murderer, the body of his victim would bleed, or give some other manifestation of recognition, is one of ancient origin, and in some countries it has been made a means of investigation and detection. Shakespeare introduces it in King Richard III., where Gloster interrupts the funeral of Henry VI., and Lady Anne exclaims:

> "O gentlemen, see, see! dead Henry's wounds
> Open their congealed mouths and bleed afresh."

The story is well known which relates that, when Richard Cœur-de-Lion hastened to the funeral of his father, Henry II., and met the procession at Fontevraud, the blood poured from the nostrils of the dead king, whose end he had hastened by his disobedience and rebellion.† The belief in this, as also in the ordeal of fire, is well illustrated in the ballad of "Earl Richard," given by Scott in "The Minstrelsy of the Scottish Border."

> "'Put na the wite on me,' she said;
> 'It was my may Catherine.'
> Then they hae cut baith fern and thorn,
> To burn that maiden in.
>
> "It wadna take upon her cheik,
> Nor yet upon her chin;
> Nor yet upon her yellow hair,
> To cleanse that deadly sin.

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mode of divination practised among the ancient Germans, as described by Tacitus, De Moribus German. Cap. X.

* Baldricus, Lib. I. Chron. Camerac. cap. 21. (Ducange, s. v. *Sors.*)

† Roger de Hoveden, Ann. 1189; Roger of Wendover.

"The maiden touched that clay-cauld corpse,
A drap it never bled;
The ladye laid her hand on him,
And soon the ground was red."

In the notes to this ballad, Scott gives some curious instances of the judicial use of this belief, even as late as the seventeenth century. In 1611, suspicion arising as to the mode by which a person had met his death, the body was exhumed, and the neighborhood summoned to touch it according to custom. The murderer, whose rank and position placed him above implication, kept away; but his little daughter, attracted by curiosity, happened to approach the corpse, when it commenced bleeding, and the crime was proved. In another case, which occurred in 1687, the indictment sets forth that blood rushed from the mouth and nostrils of the deceased, who had been found drowned, on being accidentally touched by his son; and the latter was convicted and executed, although there was little other evidence against him, except a generally bad character. The extent to which the superstition was carried is shown by a story of a young man, who quarrelled with a companion, stabbed him, and threw the body into a river. Fifty years passed away, when a bone chancing to be fished up, the murderer, then an old man, happened to touch it, and it streamed with blood. Inquiring where it had been found, he recognized the relic of his crime, confessed it, and was duly condemned. We may trace a more poetic form of this superstition in the touching legend of the welcome which the bones of Abelard gave to Heloise, when, twenty years after his death, she was consigned to the same tomb.

Although there is no allusion to this custom in any of the primitive Leges Barbarorum, nor even in the German municipal code of the thirteenth century, yet it was judicially employed there until the sixteenth century, under the name of "Bahr-recht." A variation of it, known as "Scheingehen," was practised in the Netherlands and the North, in which the hand of the corpse was cut off, and touched by all suspected persons, with protestations of innocence, and when the guilty one came, it was expected to bleed.*

* Königswarter, *op. cit.* p. 183.

Having thus described the various forms in which the common principle of the ordeal developed itself, there are some general considerations connected with it which claim our brief attention. It was thoroughly and completely a judicial process, ordained by the law for certain cases, and carried out by the tribunals as a regular form of ordinary procedure. From the earliest times, the accused who was ordered to undergo the trial was compelled to submit to it, as to any other decree of court. Thus, by the Salique law, a recusant under such circumstances was summoned to the royal court; and if still contumacious, he was outlawed, and his property confiscated, as was customary in all cases of contempt.* The directions of the Codes, as we have seen, are generally precise, and admit of no alternative. Occasionally, however, a privilege of selection was afforded between this and other modes of compurgation, and also between the various forms of ordeal.†

The circumstances under which its employment was ordered varied considerably with the varying legislations of races and epochs; and to enter minutely into the question of the power of the court to decree it, or the right to demand it by the appellant or the defendant, would require too much space, especially as it has already been discussed at some length with regard to the kindred wager of battle, in a previous number of this journal. Suffice it to say, that the absence of satisfactory testimony, rendering the case one not to be solved by human means alone, is frequently alluded to as a necessary

* That this was a settled practice, is shown by its existence in the earliest text of the law (Tit. LVI.), as well as in the latest (L. Emendata, Tit. LIX.). It is therefore difficult to understand how Montesquieu could have overlooked it, when, in order to establish his theory that the original Frankish institutions admitted no negative proofs, he asserts with regard to the ordeal that "Cette preuve étoit une chose de convention, que la loi souffroit, mais qu'elle n'ordonnoit pas" (Esp. des Loix, Lib. XXVIII. chap. 16), — a statement contradicted by all the monuments, historical and juridical, of the period. His only proof is a somewhat curious custom of the Salien Franks, to which we shall shortly have occasion to refer.

† "Et eligat accusatus alterutrum quod velit, sive simplex ordalium, sive jusjurandum unius libre in tribus hundredis super xxx. den." — Legg. Henrici I. Cap. LXV. § 3. By the municipal codes of Germany, a choice between the various forms of ordeal was sometimes allowed to the accused who was sentenced to undergo it. Jur. Provin. Alaman. Cap. XXXVII. §§ 15, 16; Jur. Provin. Saxon. Lib. I. Art. 39.

element;* and indeed we may almost assert that this was so, even when not specifically mentioned, as far as regards the discretion of the tribunal to order an appeal to the judgment of God. At the same time, numerous examples among those we have described authorize us to conclude that an offer on the part of the accused was rarely refused, even when there was strong evidence against him. In civil cases, we may assume that absence of testimony, or the consent of both parties, was requisite to its employment.† The comfort which the system must have afforded to indolent judges in doubtful cases is well exhibited by a rule in the ancient Custom of Normandy of the thirteenth century, by which a man suspected of crime, even though no accuser came forward, was thrown into prison and kept there until he cleared himself by the ordeal of water.‡

A rule for its employment which was extensively adopted was that which allowed the accused the privilege of compurgation with conjurators, in certain cases, only requiring him to submit to the ordeal on his failing to procure the requisite number of sponsors. Thus, in 794, a certain Bishop Peter, who was condemned by the Synod of Frankfort to clear himself, with two or three conjurators, of the suspicion of complicity in a conspiracy against Charlemagne, being unable to obtain them, one of his vassals offered to pass through the ordeal in his behalf, and on his success the Bishop was reinstated.§ That this was strictly in accordance with usage, is shown by a very early text of the Salique Law,‖ as well

* "Si certa probatio non fuerit." L. Sal. Tit. XIV., XVI. (MS. Guelferbyt.) The same is found in the Pactus Childeberti et Chlotarii, § 5, — Decret. Chlotarii II. Ann. 595, § 6. Capit. Carol. Calvi, Ann. 870, cap. 3, 7. Cnuti, Constit. de Foresta, § 11: "Sed purgatio ignis nullatenus admittatur nisi ubi nuda veritas nequit aliter investigari." Further instances are hardly needed, as the same limitation occurs in many of the laws quoted above.

† "Si accolis de neutrius jure constat, adeoque hac in re testimonium dicere non queant, tum judicio aquæ res decidatur." — Jur. Provin. Alaman. Cap. CCLXXVIII. § 5. "Poterit enim alteruter eorum petere probationem per aquam (wasser urteyll) nec Dominus nec adversarius detrectare possit; sed non, nisi quum per testes probatio fieri nequit." — Jur. Feud. Alaman. Cap. LXXVII. § 2.

‡ Établissements de Normandie, Tit. de Prison (Éd. Marnier).

§ Capit. Car. Mag. Ann. 794, § 7.

‖ "Se juratores non potuerit invenire, aut ad ineum ambulat aut," etc. — MS. Guelferbyt. Tit. XIV.

as by a similar provision in the Ripuarian code.* Among the Anglo-Saxons it likewise obtained, from the time of the earliest allusion to the ordeal occurring in their jurisprudence, down to the period of the Conquest.†

This regulation gives to the ordeal decidedly the aspect of punishment, as it was thus inflicted on those whose guilt was so generally believed that they could find none to stand up with them at the altar as partakers in their oath of denial; and this is not the only circumstance which leads us to believe that it was frequently so regarded. The graduated scale of single and triple ordeals for offences of different magnitudes is so totally at variance with the theory of miraculous interposition to protect innocence and punish guilt, that we can only look upon it as a mode of inflicting graduated punishments in doubtful cases, thus holding up a certain penalty *in terrorem* over those who would otherwise hope to escape by the secrecy of their crime, — no doubt with a comforting conviction, like that of De Montfort's priestly adviser at the sack of Beziers, that Heaven would know its own. Further evidence is afforded by the principle, interwoven in various codes, by which a first crime was defensible by conjurators, or other means, while the "tiht-bysig" man, the "homo infamatus," one of evil repute, whose character had been previously compromised, was denied this privilege, and was forced at once to the hot iron or the water. Thus among the Anglo-Saxons, in the earliest allusion to the ordeal by Edward the Elder, it is provided that perjured persons, or those who had once been convicted, should not be deemed thereafter oath-worthy, but be hurried to the ordeal, — a regulation repeated with some variations in the laws of Ethelred, Cnut, and Henry I.‡ In the German municipal law of the thirteenth

* "Quod si . . . . . juratores invenire non potuerit, ad ignem seu ad sortem se excusare studeat." L. Ripuar. Tit. XXXI. § 5.

† Dooms of Edward the Elder, Cap. III. So also in the Laws of William the Conqueror, Tit. I. Cap. XIV. — "Si sen escundira sei duzime main. E si il auer nes pot, si sen defende par juise." The collection known by the name of Henry I. has a similar provision, Cap. LXVI. § 3.

‡ "Ut deinceps non sint digni juramento sed ordalio." — Legg. Edwardi, Cap. III.; Ethelredi, Cap. I. § 1; Cnuti Sæcul. Cap. XXII., XXX.; Henrici I. Cap. LXV. § 3.

century, the same principle is observed. An officer of the mint issuing false money was permitted the first time to swear to his ignorance, but on a second offence he had to submit to the ordeal; and it was similarly enjoined on those who had become infamous on account of a previous conviction of theft.* In the legislation of Charlemagne, there is a curious provision, by which a man convicted seven times of theft was no longer allowed to escape on payment of a fine, but was forced to undergo the ordeal of fire. If he succumbed, he was put to death; if he escaped unhurt, he was not discharged as innocent, but his lord was allowed to enter bail for his future good behavior,† — a mode at once of administering punishment and of ascertaining whether his death would be agreeable to Heaven. When we thus regard it as a penalty on those who by misconduct had forfeited the confidence of their fellow-men, the system loses a part of its absurdity, — in proportion as it departs from the principle under which it was established.

There is also another aspect in which we feel confident that the ordeal was viewed by those whose common sense must have shrunk from it simply as an appeal to the judgment of God. There can be little doubt that it was frequently found of material use in extorting confession or unwilling testimony. By the early codes, as in the primitive Greek and Roman law, torture could be applied only to slaves, and the ordeal was a legalized torture, applied under circumstances peculiarly provocative of truth. In those ages of faith, the professing Christian, conscious of guilt, must indeed have been hardened, who could undergo the most awful rites of his religion, pledging his salvation on his innocence, and knowing under such circumstances that the direct intervention of Heaven could alone save him from having his hand boiled to rags,‡ after

* Jur. Provin. Alaman. Cap. CLXXXVI. §§ 4, 6, 7; Cap. CCCLXXIV.; Jur. Provin. Saxon. Lib. I. Art. 39.

† Capit. Car. Mag. III. Ann. 813, cap. 46.

‡ The severity of the ordeal, when the sufferer had no friends among the operators to save him, may be deduced from the description of a hand when released from its three days' tying up after its plunge into hot water; — "inflatam admodum et excoriatam sanieque jam carne putrida effluentem dexteram invitus ostendit." (Ducange, s. v. *Aquæ Ferv. Judicium.*) In this case the sufferer was the adversary of an abbey, of which the monks perhaps had the boiling of the kettle.

which he was to meet the full punishment of his crime, and perhaps in addition lose a member for the perjury committed. With such a prospect, all motives would conspire to lead him to a prompt and frank acknowledgment in the early stages of the proceedings against him. Our conclusions with regard to this point are strengthened by the fact that when the judicial use of torture, as a means of obtaining testimony and confession, was becoming systematized and generally employed, the ordeal was falling into desuetude and rapidly disappearing. The latter had fulfilled its mission, and the former was a substitute better fitted for an age which reasoned more, believed less, and at the same time was quite as arbitrary and violent as the preceding. A further confirmation of this supposition is afforded by the coincidence, that the only primitive jurisprudence which excluded the ordeal — that of the Wisigoths — was likewise the only one which habitually permitted the use of torture.*

There are two peculiarities of the system, perhaps worth alluding to, which may be thought to militate somewhat against our theory of its use. The one is the permission sometimes accorded to put forward substitutes or champions, who dared the fire or water as freely as the field of single combat. Of this custom we have already given incidentally so many examples, that further instances would be superfluous, and we would only add, that it is nowhere permitted as a general rule by any code, except in the case already quoted of the ordeal of the crôss, where it was a privilege accorded to the old or infirm, and probably only as a local custom. That a person rich enough to purchase a substitute, or powerful enough to force some unhappy follower or vassal to take his place, should obtain a favor not generally allowed, is a matter of course in the formative stages of society; accordingly it will be observed that all the instances of the kind mentioned above relate to those whose dignity or station may well have rendered them exceptional.

* An epistle attributed both to Stephen V. and Sylvester II. shows that the ordeal was evidently regarded as a torture by those whose enlightenment enabled them to condemn the popular faith in it as a superstition: "Ferri candentis vel aquæ ferventis examinatione confessionem extorqueri a quolibet, sacri non censuerunt canones, et quod sanctorum Patrum documento sancitum non est, superstitiosa adinventione non est præsumendum." — Ivon. Carnot. Epist. 74.

The other objection to our hypothesis is that to some extent the common ordeal was a plebeian process, while the patricians arrogated to themselves the wager of battle. This distinction, however, hardly existed before the rise of feudalism gave all privileges to those who were strong enough to seize them, and even then it was by no means universal. We have already seen, that although in the early part of the eleventh century the Emperor Henry II. undoubtedly promulgated such a rule, yet that Glanville a hundred and fifty years later considers the red-hot iron as noble, and that in the thirteenth century the feudal law of Germany prescribes the *wasser-urteyll* for territorial disputes between gentlemen. In the earlier codes the distinction is unknown, except that the Ripuarian Franks reserved the ordeal for strangers and slaves, — so that we are justified in assuming that no general principles can be deduced from a regulation so late in its appearance and so uncertain in its application.

The degree of confidence really inspired by the results of the ordeal is a somewhat curious subject of speculation, and one on which definite opinions are not easily reached. Judicially, the trial was conclusive; the man who had duly sunk under water, walked unharmed among the burning shares, or withdrawn an unblistered hand from a caldron of legal temperature, stood forth among his fellows as innocent. So the verdict of twelve fools in a jury-box may even now discharge a criminal, against the plainest dictates of common sense; but in neither case, perhaps, would the sentiments of the community be changed by the result. The reverential feelings which alone could impart faith in the system seem scarcely compatible with the practice of compounding for ordeals, by which a man was permitted to buy himself off, by settling the matter with his accuser. This mode of adjustment was not extensively introduced, but it nevertheless existed among the Anglo-Saxons,* while among the Franks it was a settled custom, permitted by all the texts of the Salique Law, from the earliest to the latest.† Charlemagne in the

* Dooms of Æthelstan, I. cap. 21.

† First Text, Tit. LIII. and L. Emend. Tit. LV. — A person condemned by the court to undergo the ordeal could, by a transaction with the aggrieved party, pur-

earlier portion of his reign does not seem to have entertained much respect for the judgment of God when he prescribed the administration of the ordeal for trifling affairs only, cases of magnitude being reserved for the regular investigation of the law.* Thirty years later, the public mind appears afflicted with the same doubts, for we find the monarch endeavoring to enforce confidence in the system by his commands.† How far he succeeded in this difficult attempt, we have no means of ascertaining; but a rule of English law, four hundred years later, during the expiring struggles of the practice, would show that it was regarded as by no means conclusive, when a malefactor who had established his innocence by hot water or iron obtained thereby only a commutation of punishment, and was forced to leave the kingdom in perpetual exile.‡ There is also evidence that the manifest injustice of the results obtained not unfrequently tried the faith of believers, to a point which required the most ingenious sophistry for an explanation. When in 1127 the sacrilegious murder of Charles the Good, Earl of Flanders, sent a thrill of horror throughout Europe, Lambert of Redenburg, whose participation in the crime was notorious, succeeded in clearing himself by the hot iron. Shortly afterward he undertook the siege

chase the privilege of clearing himself by canonical compurgation, and thus escape the severer trial. He was bound to pay his accuser only a portion of the fine which he would incur if proved guilty, — a portion varying with different offences from one fourth to one sixth of the *wehr-gild.* The interests of the tribunal were guarded by a clause which compelled him to pay to the *grafio,* or judge, the full *fredum,* or public fine, if his conscience impelled him to submit to an arrangement for more than the legal percentage. It is on this custom that Montesquieu relies for proof of his theory of the absence of negative proofs in the Frankish jurisprudence. The fallacy of the argument is further shown by the existence of a similar privilege in the English laws, with which the learned jurist endeavors to establish a special contrast.

* "Quod si accusatus contendere voluerit de ipso perjurio stent ad crucem. . . . . Hoc vero de minoribus rebus. De majoribus vero, aut de statu ingenuitatis, secundum legem custodiant." — Capit. Car. Mag. Ann. 779, cap. 10. That this was respected as law in force, nearly a hundred years later, is shown by its being included in the collection of Capitularies by Benedict the Levite. Lib. V. cap. 196.

† "Ut omnes judicio Dei credant absque dubitatione." Capit. Car. Mag. I. Ann. 809, cap. 20.

‡ "Constitutio quidem talis fuit, quod quamvis aliquis se purgaret judicio aquæ vel ignis, hic nihilominus regnum abjuraret." Bracton, Lib. III. Tract. II. Cap. XVI. § 3.

of Ostbourg, which he prosecuted with great cruelty, and was killed in a sally of the besieged. The pious Galbert assumes that Lambert, notwithstanding his guilt, escaped at the ordeal in consequence of his humility and repentance, and philosophically adds: "Thus it is that in battle the unjust man is killed, although in the ordeal of water or of fire he may escape, if truly repentant."* The same doctrine was enunciated under John Cantacuzenes, in the middle of the fourteenth century, by a Bishop of Didymoteichus in Thrace. A frail fair one being violently suspected by her husband, the ordeal of hot iron was demanded by him. In this strait she applied to the good Bishop, and he, being convinced of her repentance and intention to sin no more, assured her that in such a frame of mind she might safely venture on the trial, and she accordingly carried the glowing bar triumphantly twice round the Bishop's chair, to the entire satisfaction of her lord and master.† In fact, as the result depended at all times upon those who administered the ordeal, it conferred an irresponsible power to release or to condemn, and it would be expecting too much of human nature to suppose that men did not yield frequently to the temptation to abuse that power. The injustice thus practised must often have shaken the most robust faith, and this cause of disbelief would receive additional strength from the fact that the result itself was not seldom in doubt, victory being equally claimed by both parties. Of this we have already seen examples in the affairs of the lance of St. Andrew and of the Archbishop of Milan, and somewhat similar is an incident related by the Bollandists in the life of St. Swithin, in which, by miraculous interposition, the opposing parties beheld entirely different effects resulting from an appeal to the red-hot iron.‡

Efforts of course were made from time to time to preserve the purity of the appeal, and to secure impartiality in its application. Clotair II. in 595 directs that three chosen persons

* Vit. Carol. Comit. Flandren. Cap. XX.

† Collin de Plancy, *op. cit.* s. v. *Fer Chaud.*

‡ "Enimvero mirum fuit ultra modum, quod fautores arsuram et inflationem conspiciebant; criminatores ita sanam ejus videbant palmam, quasi penitus fulvum non tetigisset ferrum." (Ducange, s. v. *Arsura.*)

shall attend on each side to prevent collusion;* and among the Anglo-Saxons, some four hundred years later, Ethelred enjoins the presence of the prosecutor under penalty of loss of suit and fine of twenty ores, apparently for the same object, as well as to give authenticity to the decision.† These regulations show that the evils were felt and complained of, but we may reasonably hesitate to believe that the remedies were effectual.

The Church was not a unit in its relations to the ordeal. During the earlier periods, indeed, no question seems to have been entertained as to the propriety of the practice; it was sanctioned by councils, and administered by ecclesiastics, and, as we have seen, numerous formulas of prayers and adjurations were authoritatively provided for all the different varieties in use. This unanimity was, however, soon disturbed. At the commencement of the sixth century, Avitus, Bishop of Vienne, remonstrated freely with Gundobald on account of the prominence given to the battle-ordeal in the Burgundian code, and some three centuries later St. Agobard, Archbishop of Lyons, attacked the whole system in two powerful treatises, which in many points display a breadth of view and clearness of reasoning far in advance of his age.‡ Soon after, Leo IV., about the middle of the ninth century, condemned it in a letter to the English bishops; some thirty years later, Stephen V. repeated the disapproval; in the tenth century, Sylvester II. opposed it, and succeeding pontiffs, such as Alexander II. and Alexander III., in vain protested against it. In this, the chiefs of the Church placed themselves in opposition to their subordinates. No ordeal could be conducted without priestly aid, and the frequency of its employment, which has been seen above, shows how little the Papal exhortations were respected by the ministers of the Church. Nor were they contented with simple disregard; defenders were not wanting to pronounce the ordeal in accordance with the Divine law, and it was repeatedly sanctioned by provincial

* "Ad utramque partem sint ternas personas electas, ne conludius fieri possit." — Decret. Chlotharii II. Cap. VII.

† Ethelred, III. § 4.

‡ The "Liber adversus Legem Gundobadi" and "Liber contra Judicium Dei."

synods and councils. Hincmar, Archbishop of Rheims, lent to it all the influence of his commanding talents and position; the Council of Mayence in 888, and that of Tribur near Mayence in 895, recommended it; that of Elne in 1065 recognized it; Burckhart, Bishop of Worms, whose collection of canons is still an authority, in 1023 assisted at the Council of Selingenstadt, which directed its employment. In the twelfth century we find St. Bernard alluding approvingly to the conviction of heretics by the cold-water process,* of which Guibert de Nogent gives us an instance in which he aided the Bishop of Soissons in administering it to two backsliders with the most complete success.† Prelates were everywhere found granting charters containing the privilege of conducting trials in this manner, and even so eminent a canonist as St. Yves of Chartres, as late as 1100, while insisting that ecclesiastics enjoyed immunity from it, admitted that the incredulity of mankind sometimes required an appeal to the decision of Heaven, even though such appeals were not commanded by the Divine law.‡ Pope Calixtus II. himself, about the same period, gave his sanction to the system, in the Council of Rheims, in 1119.§

This discrepancy is easily explained. During the ninth and tenth centuries the chair of St. Peter was occupied too often by men whose more appropriate sphere of action was the brothel or the arena, and the influence of the Papacy was feeble in the extreme. The Eternal City was civilly and morally a lazar-house, and the Popes had too much to do in maintaining themselves upon their tottering thrones, to have

* "Examinati judicio aquæ mendaces inventi sunt . . . . . aqua eos non suscipiente." — In Cantica, Sermo 66. (Ameilhon.)

† De Vita sua, Lib. III. cap. 18.

‡ Herbert, Bishop of Mans, was accused by Henry I. of England of endeavoring to betray that city to its former master, and was ordered to prove his innocence by the ordeal of hot iron. Yves assured him (Epist. 74) that no law or custom required it of an ecclesiastic, and we may presume that churchmen knew too much of it to trust themselves to it, except where the management was in their own hands. Yves, however, allows it for laymen. "Non negamus tamen quin ad divina aliquando recurrendum sit testimonia quando, præcedente ordinaria accusatione, omnino desunt humana testimonia: non quod lex hoc instituerit divina, sed quod exigat incredulitas humana." — Epist. 252. And again: "Vel, si id facere non poterit, candentis ferri examinatione innocentiam suam comprobet. Si hæc causa apud me ita ventilaretur, ita eam vellem tractari." — Epist. 249.

§ Ducange, s. v. *Judicium probabile.*

leisure or inclination for combined and systematic efforts to extend their power. The Italian expeditions of Otho the Great brought Italy out of the isolation into which it had fallen for nearly a century, and under the auspices of the Emperors the character of the Pontiffs improved, as their circle of influence widened. At length such men as Gregory VII. and Alexander III. were able to claim supremacy over both temporal and spiritual affairs, and, after a long resistance on the part of the great body of ecclesiastics, the tiara triumphed over the mitre. During this period, the clergy found in the administration of the ordeal a source of power and profit which naturally rendered them unwilling to abandon it at the Papal mandate. There were fees to be received for its honest,* bribes for its dishonest application; chartered privileges existed in favor of churches and monasteries by which they derived a certain revenue, and the holy relics in their keeping were rendered a source of gain considerably greater than that which accrued merely from the devotion of the faithful.† It afforded the means of awing the laity, by rendering the priest a special instrument of Divine justice, into whose hands every man felt that he was at any moment liable to fall; and even worse uses were sometimes made of the irresponsible power thus intrusted to unworthy ministers. From the Acts of the Third Council of Lateran, in 1179, we learn authoritatively that the extortion of money from innocent persons by its instrumentality was a notorious fact,‡ — a

* For instance, in a charter granted to the Vicar of Bourges, we find the following heavy payments enumerated as customary in such cases: "Qui judicium portaverit, erit in custodia vicarii, et habebit vicarius ex illo pro custodia 20 den. et si portaverit judicium, et locutus fuerit, emendabit 30 sol." (Ducange, s. v. *Judicium Portare.*)

† Charters of this nature are almost too numerous to require more than an allusion. We may however quote one or two examples. Thus Thibaut the Great of Champagne, in 1148, grants to the church of St. Mary Magdalen of Chateaudun the exclusive privilege of administering the necessary oaths on such occasions: "Ne alicui liceret exhibere sancta ad sacramenta juranda in villa Castriduni præter ministris præfatæ ecclesiæ, omnibus duellis vel sacramentis," etc. (Ducange, s. v. *Adramire.*) From Spelman we take the following, by which Henry III., in 1227, granted to the monks of Semplingham the right to hold the ordeal, among other jurisdictions: "Habeant . . . . . curiam suam et justitiam, cum saka et soka et thol et theam . . . . . et *ordell* et orest," etc.

‡ Appendix, Part II. can. 3, 11. (Ducange, s. v. *Ignis.*)

testimony confirmed by Ekkehardus Junior, who, a century earlier, makes the same accusation, and moreover inveighs bitterly against the priests who, to gratify the vilest instincts, were in the habit of exposing women to the ordeal of cold water, that they might strip them for the purpose.*

At length, when the Papal authority reached its culminating point, a vigorous and sustained effort to abolish the whole system was made by Alexander III., Innocent III., and Honorius III., who occupied the pontifical throne from 1191 to 1227. Under Innocent, the Fourth Council of Lateran, in 1215, formally forbade the employment of any ecclesiastical ceremonies in such trials; † and as the moral influence of the ordeal depended entirely upon its religious associations, a strict observance of this canon must speedily have swept the whole system into oblivion. It was actively followed up by the Papal legates in various countries, and the effect was soon discernible. In England, a rescript of Henry III., dated January 27, 1219, directs the judges then starting on their circuits to employ other modes of proof, — "cum prohibitum sit per Ecclesiam Romanam judicium ignis et aquæ." ‡ Some few charters and confirmations dated some years subsequently allude to the privilege of administering it; but Matthew of Westminster, when enumerating, under date of 1250, the remarkable events of the half-century, specifies its abrogation as one of the occurrences to be noted,§ and we may conclude that thenceforth it was practically abandoned throughout the kingdom. This is confirmed by the fact that Bracton, writing about the same time, refers only to the wager of battle as a legal procedure, and, when alluding to other forms, speaks of them as things of the past. Nearly contemporary was the Neapolitan Code, promulgated in 1221

* "Holophernicos . . . . . Presbyteros, qui animas hominum carissime appreciatas vendant; fœminas nudatas aquis immergi impudicis oculis curiose perspiciant, aut grandi se pretio redimere cogant." — De Casibus S. Galli, Cap. XIV.

† Cap. 18 enjoins on every ecclesiastic, "ne . . . . . purgationi aquæ ferventis vel frigidæ, seu ferri candentis ritum cujuslibet benedictionis seu consecrationis impendat." (Ducange, s. v. *Aquæ Frig. Jud.*)

‡ Spelman, Gloss. s. v. *Judicium.*

§ "Prohibitum est judicium quod fieri consuevit per ignem et per aquam." Mat. Westmon. Ann. 1250.

by authority of the Emperor Frederic II., in which he not only prohibits the use of the ordeal in all cases, but ridicules, in a very curious passage, the folly of those who could place confidence in it.* We may conclude, however, that this was not effectual in eradicating it; for, fifty years later, Charles of Anjou found it necessary to repeat the injunction.† About the same time, Waldemar II. of Denmark, Hakonsen of Iceland and Norway, and soon afterward Birger Jarl of Sweden, followed the example.‡ In France, we find no formal abrogation promulgated; but the contempt into which the system had fallen is abundantly proved by the fact, that in the ordinances and books of practice issued during the latter half of the century, such as the *Établissements* of St. Louis, the *Conseil* of Pierre de Fontaines, the *Coutumes du Beauvoisis* of Beaumanoir, and the *Livres de Jostice et de Plet*, its existence is not recognized even by a prohibitory clause, the judicial duel thenceforward monopolizing the province of irregular evidence. Germany was more tardy in its progress; for in 1279 we find the Council of Buda obliged to repeat the interdiction uttered by that of Lateran.§ Don Jayme I. of Aragon, in 1248, abolished it in his revision of the constitution of Majorca; || but on the mainland the march of enlightenment was slower, if Spelman's citation be correct, of a council in 1320 which threatened with excommunication all concerned in administering the ordeal of fire or of water.¶

* "Leges quæ a quibusdam simplicibus sunt dictæ paribiles . . . . . præsentis nostri nominis sanctionis edicto in perpetuum inhibentes, omnibus regni nostri judicibus, ut nullus ipsas leges paribiles, quæ absconsæ a veritate deberent potius nuncupari, aliquibus fidelibus nostris indicet. . . . . Eorum etinim sensum non tam corrigendum duximus quam ridendum, qui naturalem candentis ferri calorem tepescere, imo (quod est stultius) frigescere, nulla justa causa superveniente, confidunt; aut qui reum criminis constitutum, ob conscientiam læsam tantum asserunt ab aquæ frigidæ elemento non recipi, quem submergi potius aeris competentis retentio non permittit." — Constit. Sicular. Lib. II. Tit. 31. This last clause would seem to allude to some artifice of the operators by which the accused was prevented from sinking, in the cold-water ordeal, when a conviction was desired.

† Statut. MSS. Caroli I. Cap. XXII. (Ducange, s. v. *Lex Parib.*)

‡ Königswarter, *op. cit.* p. 176.

§ Ducange, s. v. *Judicium Probabile.*

|| "Pro aliquo crimine vel delicto, vel demanda, non facietis nobiscum vel cum bajulo aut curia civitatis, nec inter vos ipsos, batalam per ferrum calidum, per hominem nec per aquam, vel aliam ullam rem." (Ducange, s. v. *Batalia.*)

¶ Gloss. s. v. *Purgatio.*

Although the ordeal was thus removed from the admitted jurisprudence of Europe, the principles of faith which had given it vitality were too deeply implanted in the popular mind to be at once eradicated, and accordingly, as we have seen above, instances of its employment continued occasionally for several centuries to disgrace the tribunals. The ordeal of battle, indeed, was not legally abrogated until long afterward; but as this forms no part of our present theme, we shall not follow its history, contenting ourselves with an extract from Sir William Staundford, a learned judge and respectable legal authority, who, in 1557, expresses the same confident expectation of Divine interference which had animated Hincmar or Poppo. After stating that in an accusation of felony, unsupported by evidence, the defendant had a right to wager his battle, he proceeds: "Because in that the appellant demands judgment of death against the appellee, it is more reasonable that he should hazard his life with the defendant for the trial of it, than to put it on the country, ... and to leave it to God, to whom all things are open, to give the verdict in such case, *scilicet*, by attributing the victory or vanquishment to the one party or the other, as it pleaseth Him." *

The Papal authority, however, was not the only element at work to abolish this superstition. A powerful assistant must be recognized in the rise of the communes, whose sturdy common sense not unfrequently rejected its absurdity. Accordingly we find that it is rarely comprehended in their charters, as it is in those granted to abbeys and monasteries, while occasionally a special exemption is alluded to as a privilege.† The influence of the commercial and municipal spirit, fostered by the establishment of chartered towns, in dissipating the mists of error and prejudice, is further shown by the fact, that the early codes of the Commercial Law make no reference whatever to the proof by ordeal, though some of those codes were drafted at a period when it was a recognized portion of

* Plees del Corone, Chap. XV. (quoted in 1 Barnewall & Alderson, 433).

† An instance of this occurs as early as 1132, in a charter granted by King Roger of Naples to the inhabitants of Bari: "Ferrum cacavum, pugnam, aquam, vobis non judicabit vel judicari faciet." (Muratori, Antiq. Ital., Dissert. 38.)

ordinary jurisprudence. The Rôles d'Oléron, the Laws of Wisby, and the Consulat de la Mer, endeavor to regulate all questions by the reasonable rules of evidence, and offer no indication that the judgment of God was resorted to when human means were at fault. Indeed, King Amaury, who ascended the throne of Cyprus in 1194, specifically declares, in a law embodied in the Assises de Jerusalem, that maritime causes are under the jurisdiction of a special court, instead of the ordinary civic tribunal, in order to avoid the battle ordeal permitted by the latter;* from which we may safely assume that the other forms of ordeal were equally ignored by the maritime law dispensers.

Although we may hail the disappearance of the ordeal as marking an era in human progress, yet should we err in deeming it either the effect or the cause of a change in the constitution of the human mind. The mysterious attraction of the unknown and undefined, the striving for the unattainable, the yearning to connect our mortal nature with some supernal power, — all these mixed motives assisted in maintaining the follies and superstitions which we have described. The mere external manifestations were swept away; but the potent agencies which vivified them remained, not perhaps less active because they worked more secretly. Thus generation after generation of absurdities, strangely affiliated, waits on the successive descendants of man, and perpetuates in another shape the superstition which we had fondly thought eradicated. In its most vulgar and abhorrent form, we recognize it in the fearful epidemic of sorcery and witchcraft which afflicted the sixteenth and seventeenth centuries; sublimed to the verge of heaven, we see it reappear in the seraphic theories of Quietism; descending again towards earth, it assumes the mad vagaries of the Convulsionnaires. In a different guise it leads the refined scepticism of the eighteenth century to a belief in the supernatural powers of the divining-rod, which could not only trace out hidden springs and deep-buried mines, but could also discover crime, and follow the

* "Por ce que en la cort de la mer n a point de bataille por preuve ne por demande de celuy veage, et en l autre cort des borgeis deit aveir espreuves par bataille." — Baisse Court, Cap. 43.

malefactor through all the doublings of his cunning flight.* Each age has its own sins to answer for, its own puerilities to bewail, — happiest that which best succeeds in hiding them, for it can scarce do more. Here, in our boasted nineteenth century, when the triumph of human intelligence over the forces of nature, stimulating the progress of material prosperity with the press, the steam-engine, and the telegraph, has deluded us into sacrificing our psychical to our intellectual being, even here the duality of our nature reasserts itself, and in the obscene blasphemy of Mormonism and in the fantastic follies of pseudo-Spiritualism we see a protest against the despotism of mere reason. If we wonder at these frightful perversions of our noblest attributes, we must remember that the intensity of the reaction measures the original strain, and in the dismal insanities of the day we thus may learn how utterly we have forgotten the Divine warning, "Man shall not live by bread alone!"

Which age shall cast the first stone? When Cicero wondered how two soothsayers could look at each other without laughing, — "mirabile videtur quod non rideat haruspex cum haruspicem viderit," — he showed that the grosser forms of superstition were not universally shared. Such, we may be assured, has been the case at every period; and, in our own day, can we, who proudly proclaim our disbelief in the absurdities around us, individually assert that we have not contributed, each in his own infinitesimal degree, to the causes which have produced them?

* When, in 1692, Jacques Aymar attracted public attention to the miracles of the divining-rod, he was called to Lyons to assist the police in discovering the perpetrators of a mysterious murder, which had completely baffled the agents of justice. Aided by his rod, he traced the criminals, by land and water, from Lyons to Beaucaire, where he found in prison a man whom he declared to be a participant, and who finally confessed the crime. Aymar was at length proved to be merely a clever charlatan; but the mania to which he gave rise lasted through the eighteenth century, and nearly at its close his wonders were rivalled by a brother sharper, Campetti.